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ABSTRACT

A study evaluated the effects of the Age Discrimination in Employment Act (ADEA) in: (1) the operation of the ADEA in federal courts; (2) the role of performance appraisal in age discrimination suits; (3) the enforcement of the ADEA by the Equal Employment Opportunity Commission (EEOC); (4) factors associated with complaints brought under the law in eight states--New York, Wisconsin, Illinois, New Jersey, Nebraska, Connecticut, Georgia, and Maryland; and (5) retaliation against older workers who filed complaints. Content analysis, legal case analysis, standard statistical analysis of data sets, and survey research methodologies were used in the investigation. Almost 300 federal court cases were analyzed; among the findings were that the filing of claims under the ADEA has been dominated by white males, especially managerial and professional personnel, with 54 percent filed by employees between the ages of 50-59. Older workers usually filed suit only when separated from their jobs. Nationally, employers were victorious 68 percent of the time. In regard to performance appraisal, employers were successful in defending themselves 78 percent of the time, especially if they used standard appraisal methods. The study also found that the majority of employee claims were not upheld by the EEOC, especially in more recent years. Actions in the states studied mirrored the federal findings, although some actions varied among them. Some evidence of retaliation was found. (Extensive appendices include case analysis coding forms, the questionnaire, and respondents' comments.) (KC)

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THE AGE DISCRIMINATION IN EMPLOYMENT ACT: AN EVALUATION OF FEDERAL AND STATE ENFORCEMENT, EMPLOYER COMPLIANCE AND EMPLOYEE CHARACTERISTICS

A Final Report to the NRTA-AARP Andrus Foundation

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EXECUTIVE SUMMARY

Congress enacted the Age Discrimination Employment Act (ADEA) "to prohibit discrimination in employment on account of age in such matters as hiring, job retention, compensation, and other terms and conditions of employment."* The ADEA prohibits discrimination by employers, employment agencies, and labor unions against workers ages 40 and over. The ADEA has become the nation's most important mechanism for protecting the employment rights and opportunities of older workers. The importance of the ADEA will continue to grow as the proportion of persons, over age 40, increases. Due to slower economic growth, fewer new job opportunities, and a changing economy--older workers will be continually pressured to leave work prior to the termination of their productive years.

The study contains five broad areas of investigation. First, this research empirically assessed the operation and effectiveness of the ADEA in the federal courts. In addition, a set of cases in which performance appraisal was the central issue was studied. Previous research by the investigators has highlighted the central role performance evaluations play in the decision-making process of the courts. Third, the study investigated the enforcement of the ADEA by the Equal Employment Opportunity Commission. Since 1979, the EEOC has been

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*Senate Report No. 95-493, 95th Cong. 2nd Sess., reprinted in (1978) U.S. Code Cong. and Admin. News, 976.

the administrative agency for the ADEA. Our research is the first to statistically analyze age discrimination complaints filed at the federal level. Fourth, factors associated with the filing and outcome of complaints brought under eight state laws were studied. State age discrimination laws are important because the federal ADEA requires deferral of age discrimination complaints to state enforcement agencies, prior to the adjudication in the federal courts. Fifth, the study examined instances of organizational retaliation against older workers who filed ADEA complaints. The majority of age discrimination complaints are filed by those in the 50-59 age bracket. Employees in this age group are most susceptible to retaliation.

Four complementary research methodologies were employed in this study. Federal ADEA cases were analyzed using a scientific methodology known as content analysis. Content analysis is a research technique which attempts to quantitatively classify a body of information into a system of categories. Those cases in which performance appraisal was the critical issue were studied using both content analysis and traditional legal case analysis. Federal and state cases were analyzed from data sets provided by the EEOC and the state administrative agencies of New York, Wisconsin, Illinois, New Jersey, Nebraska, Connecticut, Georgia and Maryland. These data sets were analyzed using standard statistical techniques including frequency distributions, cross-tabulations and chi-square tests. The research investigating the impact of organizational retaliation on the older worker utilized

a survey research design. Results from this survey were analyzed using standard statistical techniques including regression and correlational analysis.

Findings

Federal Litigation

Two hundred and eighty federal court cases were analyzed using content analysis. Only cases involving a substantive issue of law or fact were considered. No ADEA claims which were decided on procedural issues were included in this study. Some of the most important findings were:

> The filing of claims under the ADEA has been dominated by white males (84.1 percent).
>
> A majority of the cases have been filed by managerial and professional employees (59.3 percent). The ADEA may be the only recourse for white, male professionals who believe they have unfairly suffered an adverse employment action.
>
> Fifty-four percent of the cases have been filed by employees between the ages of 50-59.
>
> The majority of cases originated outside the Northeast (78.9 percent).
>
> There has been an increase in ADEA cases in recent years. The first 11 years of the legislation (1968-1978) account

for only 25.4 percent of the substantive cases, with the remaining 74.6 percent resolved in the period 1979-1986. In the early years of the ADEA, the federal courts were required to establish many procedural rules. The increase in substantive cases in recent years suggests that the procedural rules for ADEA cases are, in fact, being largely settled.

Older workers may tolerate less severe forms of age-based employment discrimination and are generally willing to engage in litigation only when separation occurs. Various forms of discharge and involuntary retirement accounted for 67.5 percent of the cases.

The principal determinative factors courts utilized in ADEA cases include: performance (35.4 percent), forced retirement under a bona fide retirement plan (17.9 percent), job elimination (12.9 percent), corporate policies (10.0 percent), and BFOQ (10.0 percent). The appraisal of older employees' performance is the focus of a special section of this report.

On a national basis, employers have been victorious in ADEA actions 67.7 percent of the time. It may be the employees have a more favorable prelitigation success rate, with employers only litigating cases they believe they can win.

Performance Appraisal Cases

To achieve the objectives of the ADEA depends on the willingness and ability of organizations to measure and evaluate performance in nondiscriminatory manner. The type of personnel action appears to dictate the nature of the proof required to substantiate a nondiscriminatory employer decision. Promotion decisions require that the employer only show that the complaining employee was not as qualified as the candidate selected. Along the same lines, layoffs and retirements require that the employer demonstrate that the laid-off/retired employee was not as qualified as those selected to remain. In contrast, a discharge decision will not be upheld where the employee has performed at a minimally acceptable level. Therefore, discharge actions will probably require an expanded justification by the employer in order to establish that the decision was made on a nondiscriminatory basis.

Formal performance evaluation procedures have not been required for an employer-defendant to mount a successful defense. The courts have permitted less reliable sources of employee performance information to be used as conclusive evidence substantiating an employer claim of nondiscriminatory decision-making. However, an employer that conducts periodic, well-designed performance evaluations and makes personnel decisions based upon the performance appraisal is likely to successfully rebut a claim of discriminatory conduct.

Among the 50 cases studied, employers taken as a whole were successful in defending the ADEA claims 78 percent of the time. Therefore, it is evident that the use of fair and consistent performance appraisal methods supports the intent of the ADEA to place older workers on an equal footing with their younger counterparts.

EEOC Findings

Over 100,000 EEOC complaints closed from July 1, 1979 to May 16, 1986 were analyzed using frequency distributions, cross-tabulations and chi-square tests. Some of the most important findings were:

The filing of claims under the ADEA alone has been dominated by males (67.6 percent).

The majority of cases have been filed by those in the 50-59 age group.

Most of the complaints involved a termination action.

The majority of complaints resulted in a finding of 'no probable cause' of discriminatory conduct.

Women experienced greater success than men in filing age discrimination complaints.

The complaints experiencing the most success were in the 60-70 age group.

The more recent the decision date of the cases, the less success experienced by complainants.

State Findings

The results of the assessment of the operation and impact of the eight state age discrimination statutes show that:

Most of the complainants have been male.

Most of the complainants have been white.

The majority of complainants were in the 50-59 age group. In New York, the age discrimination in employment provision of the Human Rights Law covers workers 18-65. As a result, in New York a proportion of the claims were filed by individuals under 40 years of age (24.6 percent).

The most common personnel action at issue was discharge.

In most of the states, the majority of cases resulted in a finding of "no probable cause" of discriminatory conduct. In Illinois, approximately half of the complaints ended in a settlement. In New York, conciliating efforts preliminary to a resolution of the probable cause issue were successful in 18.2

percent of the cases. Settlement and conciliation can reasonably be interpreted as containing some measure of success for the complainant. Yet it is apparent that in all eight states employers have consistently mounted successful defenses.

In New York, male and white complainants experienced more success than did females and non-whites. In contrast, in Wisconsin, non-whites experienced more success in findings of probable cause. In New Jersey and Nebraska, females experienced more success than did males.

In New York and Illinois, complainants were least successful when the personnel action precipitating the claim concerned termination. However, in Wisconsin, complainants were most successful when the claim involved the more serious personnel actions.

The age group of the complainant had a significant impact on case outcome. Looking at those complainants 40-70 years only, in both New York and Maryland, the 60-70 age group experienced more success than other age brackets.

In New York, professional and managerial employees experienced more success than other occupational groups. However, in contrast to the ADEA court cases, more state complainants were non-professional employees.

In Maryland, government employees experienced less success than various private sector employees.

Retaliation

The purpose of this part of the research was to investigate the incidence and degree of organizational retaliation against older workers who "whistleblow" by filing employment discrimination charges. Survey questionnaires were analyzed from one hundred and twenty-two individuals who filed age discrimination in employment complaints with the State of Wisconsin Equal Rights Division (WERD). The results indicated that:

> Demographic analysis of the respondents revealed that 59 percent were male, 63 percent reported graduation from high school as their highest level of education, 45 percent were employed as managers or professionals, and the majority of complainants worked in the private sector.
>
> The majority of the complaints were filed because of discharge (60 percent).
>
> Correlational analysis revealed that top management hostility, supervisor hostility and lack of merit were significantly correlated in the predicted direction with comprehensiveness of retaliation and coworker supportiveness was negatively correlated with stages of retaliation.

CHAPTER ONE

INTRODUCTION

Congress enacted the Age Discrimination in Employment Act[1] (ADEA) "to prohibit discrimination in employment on account of age in such matters as hiring, job retention, compensation, and other terms and conditions of employment."[2] The legislation was targeted to promote the employment of older persons based upon their ability rather than their age, prohibit arbitrary age discrimination in employment, and assist employers and workers in finding ways of meeting the problems arising from the impact of age in employment.

The Act prohibits discrimination by employers, employment agencies, and labor unions. The protected category originally included workers ages 40-65, with the upper limit raised to age 70 in 1978.[3] Effective January 1, 1987, the age cap was eliminated.[4] The provisions against employer discrimination operate in nearly all areas of employment including hiring, placement, retention, promotion, compensation, and retirement. Employment agencies are prohibited from refusing to refer or classifying individuals on the basis of their age.[5] Discrimination by labor organizations is prohibited when unions use age (1) to exclude or expel individuals from membership; (2) classify individuals or refuse to refer individuals because of age or (3) cause or attempt to cause an employer to discriminate on the basis of age.[6]

The ADEA has become the nation's most important mechanism for protecting the employment rights and opportunities of older workers. However, the ADEA was not designed to shoulder the entire burden of age discrimination in employment complaints. Where there exists a suitably effective state statute prohibiting employment discrimination based on age, the federal Act provides for the deferral of age discrimination complaints to the appropriate enforcement agency in each state.[7] Indeed, the U.S. Supreme Court has interpreted the ADEA as making mandatory the commencement of state proceedings in deferral states,[8] prior to any enforcement action under the federal law. Thus, a prospective ADEA litigant must first file with the appropriate state agency when seeking a resolution of his or her claim.[9]

The effect of such provisions is to significantly enhance the role of state law in promoting the equal treatment of older persons in employment matters. Moreover, as the costs and delays of courtroom litigation continue to mount, it can be expected that the resolution mechanism offered by state agencies will become increasingly attractive. At present, 35 states maintain adequate legislation and an enforcement agency qualifying them as deferral states.[10]

The deferral of ADEA complaints to state agencies necessarily implies that the relevant state statute and enforcement process will effectively and fairly address the grievances of older workers. While the operation and impact of the ADEA has been consistently scrutinized since its enactment, two state laws have also been subject to an evaluation of their effectiveness in fulfilling the purposes of the ADEA (Miller & Schuster, 1986).

This research integrates the analysis of both federal and state enforcement of age discrimination in employment legislation. Utilizing expanded federal case data, EEOC data, and case data provided by eight state administrative agencies, the following issues were addressed:

-- What personnel actions are most likely to give rise to an ADEA claim?

-- How successful have employees been in ADEA litigation?

-- What factors have courts and agencies been influenced by in ADEA litigation and proceedings?

-- Do the federal courts, EEOC, and state agencies differ in their adjudication of employee rights under the ADEA? Which of these forums offer the greatest likelihood of success for agrieved older workers?

-- What are the personal and socioeconomic characteristics of employees most likely to engage in ADEA litigation?

-- What are the characteristics of employers most often engaged in ADEA litigation?

-- What industries attract the most ADEA litigation?

-- In what geographical regions of the country is ADEA litigation greatest? Is there regional variation in the enforcement of age discrimination legislation?

-- What is the impact of personal, demographic and legal factors of ADEA cases on the outcome?

-- As a result of findings on the above, what strategies should the EEOC, state equal opportunity agencies, attorneys and advocacy groups pursue to effectuate increased employer compliance with age discrimination in employment legislation?

The remainder of this chapter presents a brief discussion of the federal Age Discrimination in Employment Act. Also examined is the relationship between employment discrimination theory and the older worker. In addition, the chapter reviews past efforts at assessing the operation and impact of the ADEA. The chapter concludes with a description of the structure of the report.

The Age Discrimination in Employment Act

President Johnson, in his January 23, 1967 Older American message to Congress recommending passage of the Age Discrimination in Employment Act (ADEA) of 1967 stated that:

> Hundreds of thousands not yet old, not yet voluntarily retired, find themselves jobless because of arbitrary age discrimination. Despite our present low rate of unemployment, there has been a persistent average of 850,000 people age 45 and over. They comprise 27 percent of all the unemployed, and 40 percent of the long-term unemployed. In 1965, the Secretary of Labor reported to the Congress and the President that approximately half of all private job openings were banned to applicants over 55; a quarter were closed to applicants over 45.
>
> In economic terms, this is a serious-and senseless-loss to a nation on the move. But, the greater loss is the cruel sacrifice in happiness and well-being which joblessness imposes on these citizens and their families (Superintendent of Documents, 1968).

The ADEA followed a period in which federal efforts to deter employment discrimination against aging workers centered only on the use of the government's purchasing power to require federal contractors to comply with regulations prohibiting age discrimination.[11] Congress enacted the Age Discrimination in Employment Act,[12] in order "to prohibit discrimination in employment on account of age in such matters as hiring, job retention, compensation, and other terms and conditions of employment."[13] The legislation was targeted to promote the employment of older persons based upon their ability rather than their age, prohibit arbitrary age discrimination in employment, and assist employers and workers in finding ways of meeting the problems arising from the impact of age in employment.[14]

ADEA Coverage

The Act prohibits discrimination by employers, employment agencies, and labor unions.[15] The provisions against employer discrimination make it unlawful for an employer:

> (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
>
> (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age or;
>
> (3) to reduce the wage rate of any employee in order to comply with this chapter.[16]

Employment agencies are prohibited from refusing to refer or classifying individuals on the basis of their age.[17] Discrimination by labor unions is prohibited when those organizations use age to (1) exclude or expel individuals from membership; (2) classify individuals or refuse to refer individuals because of age; or (3) cause or attempt to cause an employer to discriminate on the basis of age.[18]

The Act, originally protected workers ages 40-65, with the upper limit raised to age 70 in 1978.[19] The 1978 amendment removed the age cap entirely for Federal employees.[20] The 1986 amendment (effective 1/1/87) removed the 70 age cap thus eliminating mandatory retirement in the private sector and for most state and local government employees.[21] Senator Heinz in support of the 1986 amendment said:

> The importance of removing the age 70 cap is its message to present and future older workers: you are to be employed on the basis of your ability, not on the basis of your birthdate .... There are 1.1 million Americans age 70 and over in our workforce. Many of these people want to continue working - sometimes for reasons of self-fulfillment, but often for reasons of economic necessity. Federal law deprives these people of the same guarantees of equal opportunity in employment that other citizens enjoy. They are deprived of this protection not on the basis of who they are and what they can do, but solely on the basis of their age.[22]

The amendment includes seven year exemptions from the removal of the 70 age limit for tenured college faculty and police and firefighters. Congress exempted tenured faculty because they believed that colleges would be more effective and creative with a balance of old and new professors. The police and firefighters were exempted because there is no uniformity in how a BFOQ defense is treated in the courts. For both these exempted groups, there will be a study conducted within five years to determine if the exemption is justified.

ADEA Exceptions

There are four major exceptions to the prohibitions of the ADEA. What might otherwise be illegal personnel practices are legitimate under the Act where (1) age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business; (2) the differentiation is based on reasonable factors other than age; (3) the employer is observing the terms of a bona fide seniority system or a bona fide employee benefit plan which is not a subterfuge to evade the purposes of the Act; and (4) the employer is discharging an employee for good cause.[23]

The ADEA permits an employer to discriminate on the basis of age if "age is a bona fide occupational qualification (BFOQ) reasonably necessary to the normal operation of the particular business.[24] Court decisions and EEOC guidelines have indicated that the BFOQ exception is to be of limited scope and application.[25] The BFOQ defense has generally only been available for employment practices involving bus drivers, firefighters, police officers, airline pilots and helicopter test pilots, and arising in the context of a hiring or mandatory retirement policy.

The BFOQ defense is given the greatest deference by courts where safety factors are involved in the particular job, such as those listed above. In general, such instances will require the employer to only show that a rational basis exists to believe that the discriminatory practice serves to reduce the risk of harm to the public.[26] In a recent case,[27] a federal appeals court went on to say that the employer does not have to test its older employers for job fitness on an individual basis (Court finds age, 1987). When safety is not involved, the employer has to establish a sound factual basis for any broad discriminatory policy, thereby significantly limiting the defense's utility for a non-safety related policy.[28]

The "reasonable factors other than age" defense requires the employer to establish that the employee was unable to perform a test or satisfy a valid job requirement, and that inability, and not age, was the determining factor in the employment decision.[29] The "reasonable factor" differentiation is broad based, and has been utilized on the basis of particular factual situations. The reasonable factors have ranged from the lack of basic job skills or initiative to company-wide economic maladies.[30]

The ADEA permits an employer to observe a bona fide seniority system or employee benefit or retirement plan which is not a subterfuge to evade the purposes of the Act, providing the plan does not compel the involuntary retirement of employees.[31] While the validity of an employment action under such a plan depends on the facts of an individual case, there are several common factors which will establish a plan as bona fide.

Courts will look to see if the retirement plan has been in existence for some time, as opposed to being conceived just prior to an employee's "retirement." The court will also consider whether the plan pays substantial benefits, or merely provides nominal amounts. Additionally, the courts will determine if the employer has actually followed the terms of the plan, or whether the employer has "loosely" interpreted the plan's language.[32] Finally, the employee's choice to retire must always appear to be voluntary.[33] In a recent case, Aspgren v. Montgomery Ward & Company, Inc.,[34] the court held that the company's voluntary retirement program may have amounted to a "constructive discharge" since the employees were told that they would be fired without separation benefits if they did not leave voluntarily. (Forced early retirement, 1987).

Cabot (1987) notes that employers are concerned that the 1986 amendment will make it difficult for them to discharge older workers for fear of increased ADEA litigation. However, there is evidence to show that there may not be an increase in litigation. First, California and Florida have large elderly population with no mandatory retirement and no evidence of increased litigation by those over 70. Specifically, in California in 1984, only 2 percent of age complaints were filed by those 69 and over.[35] Second, there is recent evidence that 72 percent of plaintiffs filing ADEA charges were age 59 or under (Schuster & Miller, 1986). Third, the average retirement age is 63 and the trend is that it is falling (Cabot, 1987).

ADEA Procedures

For an individual to bring a private action under the ADEA, a charge alleging unlawful discrimination must first be filed with the Equal Employment Opportunity Commission (EEOC).[36] The charge must be in writing or reduced to writing, and filed with the EEOC within 180 days of the alleged unlawful act of discrimination. Some states have enacted legislation prohibiting age discrimination and created administrative agencies to adjudicate these rights. In these instances an aggrieved employee must first pursue relief through these state administrative agencies. The employee can file charges with the EEOC within 30 days of termination of the state proceedings or within 300 days of the alleged unlawful conduct, whichever is earlier.[37]

The EEOC is then allowed 60 days to investigate the charge and eliminate any illegal practices by informal methods. At the end of this period, the individual is permitted to bring a private suit in federal court.[38] Available remedies for an aggrieved plaintiff include back wages and benefits, as well as an equal amount of liquidated damages.[39] Liquidated damages, however, are only available upon showing of a "willful violation" of the ADEA.[40] A "willful violation" is defined as a "knowing and voluntary violation of the Act."[41] The Act also provides for attorney's fees to a prevailing plaintiff.[42] All of these forms of relief have been incorporated into the ADEA from the Fair Labor Standards Act.[43]

Establishing Age Discrimination: The Burden of Proof

The establishment of a prima facie case of age discrimination is not a matter of statutory law. Hence, many of the federal courts that have dealt with the issue have not always agreed on the appropriate formula to govern the plaintiff's attempt to establish his/her case.[44] However, it has become clear that the Fifth Circuit has greatly influenced the formulation of the prima facie case (Edelman & Siegler, 1978). That court originally listed four elements to be proved as requisite for establishing a prima facie case: (1) the employee's membership in the protected group; (2) his discharge; (3) his replacement with a person outside the protected group; and (4) his ability to do the job.[45] These elements parallel the elements of the prima facie Title VII case discussed in McDonnell Douglas Corp. vs. Green.[46] Recently, the Fifth Circuit has consistently held that it is not necessary for a plaintiff who was laid off during a reduction in force to show actual replacement by a younger employee.[47] In fact, it now appears that even the replacement of the plaintiff by an older worker will not foreclose the establishment of a prima facie case.[48] These four elements do not establish "an immutable definition of a prima facie case. The concept simply refers to evidence sufficient for a finding in the plaintiff's favor unless rebutted."[49] In Marshall vs. Goodyear Tire and Rubber Co., the Fifth Circuit noted, as recognized in McDonnell Douglas, that the prima facie proof required will vary with the applicable facts in each case.[50] Thus, the courts will not simply borrow from the McDonnell Douglas guidelines and apply them automatically, but will seek to tailor the burden of proof in age discrimination cases so that relief will be granted only in those cases where actual discrimination is found.[51]

To maintain a prima facie case, the plaintiff must provide evidence sufficient to support an inference of discrimination.[52] Evidence which tends to identify age as the "likely reason" for the employment decision qualifies as sufficient.[53] The types of evidence found sufficient to establish a prima facie case of a violation of the ADEA can vary. The evidence may consist solely of specific incidents of discriminatory conduct,[54] or there may be a combination of discriminatory conduct and statistical evidence.[55] Examples of evidence sufficient to establish a prima facie case include proof that a plaintiff was within the protected age bracket and that the defendant has: placed an advertisement in a newspaper seeking a replacement for defendant and the advertisement explicitly seeks young applicants;[56] filled an opening for which the plaintiff was qualified with a younger person with similar qualifications;[57] engaged in a pattern of age discrimination by never hiring individuals within the protected age bracket;[58] or, amended a pension plan to require employees to retire at age 62 rather than at age 65.[59]

Once the plaintiff has established a prima facie case, the defendant has the burden of going forward with evidence that reasonable factors, other than age, were the basis for the alleged discriminatory employment practices.[60] As previously discussed, an employer-defendant can accomplish this in various ways. The plaintiff retains the burden of proving the case of discrimination by a preponderance of the evidence.[61] That is, the plaintiff bears the burden of persuasion throughout the trial.[62] The defendant need only "articulate some legitimate nondiscriminatory reason" for the adverse employment decision.[63] An exception is the BFOQ defense, which is an affirmative defense, where the employer bears the burden of persuasion. As to all other defenses, the plaintiff bears the ultimate burden of proving that the employer acted with a discriminatory motive, and that age was a determining factor in the employment decision.[64]

Employment Discrimination and the Older Worker

Three major theories of employment discrimination have dominated the economic literature: statistical discrimination (Aigner & Cain, 1977; Phelps 1972; Spence, 1973), monopoly power (Cain, 1976; Thurow, 1969), and personal prejudice (Becker, 1971). These theories have been used extensively in the search for understanding the propelling forces behind race and sex discrimination (Ashenfelter & Rees, 1973; Marshall, 1974). However, a review of the literature indicates little, if any, effort to explain the cause of employment discrimination against the older worker within the context of the above models.

This failure to actively assign a theoretical framework to age discrimination in employment has been somewhat compensated for through the writings of legal scholars and industrial gerontologists. A consensus has formed since the inception of the ADEA that age discrimination in the work-place is essentially a manifestation of mores or beliefs common throughout our society (Blumrosen, 1982; Dept. of Labor, 1965). The pervasive notion that abilities decline with age has supported the organizational value that older employees are not as efficient as younger employees (Comfort, 1976; Kendig, 1978). This belief continues today, despite evidence showing such a proposition has no basis in fact (Riley & Foner, 1968).

The clear result in the United States has been, according to the president of a management consulting firm, the creation of a work environment "in which 'young' is better than 'old.' Such a philosophy appears to have become an underlying corporate value" (Doyle, 1973).

The recognition that age discrimination in employment is a result of misinformed beliefs, concerning the physical and mental capability of older workers, serves well as a focal point in establishing a more formal model of age discrimination. Indeed, it would appear age discrimination fits well within the personal prejudice theory of employment discrimination. In fact, the value-based cause attaches quite easily to Kenneth Boulding's third source of personal prejudice: false generalizations (Boulding, 1976).

It should be noted that no attempt is being made here to define a theory of employment discrimination based on age. Such an effort falls well beyond the purpose and scope of this study. Rather, this discussion seeks to establish a setting in which the role of the ADEA in addressing and eliminating arbitrary age discrimination could be better understood.

The organizational environment the ADEA operates within is not producing personnel decisions affecting older workers based merely on the rising costs of fringe benefits or training.[65] Hiring, promotion and discharge decisions are often made with the thinking that older workers become a liability to productivity improvement rather than an asset.[66]

It would appear that the obvious remedy to such a value system would be education, and indeed, the ADEA provides for an education and research program.[67] However, the explosion in ADEA complaints in recent years would indicate that public education has yet to produce a major shift in attitudes. A slow change in attitudes might be expected,[68] since age discrimination is often viewed as a benign act of deference to a natural process, without the insidious intent ascribed to race or sex discrimination (Blumrosen, 1982).

The result is that ADEA litigation has in fact acquired the role of educator. At the same time, it may be posited that value changes evolve more quickly when present values become costly to maintain. Extensive and repeated defenses of age discrimination in employment claims can constitute relevant costs to maintaining a particular value system. In light of recent emphasis on litigation, as opposed to conciliation (Smith, 1980), this proposition takes on particular significance.

Thus the operation and impact of ADEA litigation is central to the elimination of age discrimination in employment. This report serves as an effort to assess whether the federal courts, the EEOC and private litigants are operating in a fashion that fulfills both the stated and acquired objectives of the Act.

Research on the ADEA

Recent years have seen a significant increase in the number of ADEA complaints. In fact, the number of ADEA complaints is increasing at a greater annual rate than the rates for all other groups protected by equal employment legislation (Brandon & Synder, 1985). The U.S. Equal Employment Opportunity Commission (EEOC) reported in 1981 that age discrimination complaints had increased significantly since July 1, 1979, when the EEOC assumed responsibility for administering and enforcing the ADEA (EEOC reports, 1981). The EEOC has continued to report significant increases in the number of individuals filing complaints. For example, the EEOC reported that 15,303 ADEA charges were filed during Fiscal Year 1983, compared to 9,207 in Fiscal Year 1982, representing about a 66 percent increase in only one year (US EEOC, 1984).

The significance of this increase has not gone unnoticed by legal observers. The Act has become the subject of intensified evaluation by legal scholars. These scholars have utilized trends in ADEA case law, as well as court opinions on various statutory aspects of the Act, as vehicles for discerning the past performance and future direction of the Act.

Authors have primarily focused on the procedural and substantive law issues arising under the Act. Sheeder (1980) has provided an analysis of the state of confusion existing among federal courts concerning the complex filing and deferral requirements of the Act. Grant (1981) has compared the statutory and procedural requirements of the ADEA with those requirements of a similar state law.

Smith and Leggette (1980) and Kalet (1986) have been among numerous legal scholars to outline the burden of proof requirements faced by parties to ADEA litigation. Blakeboro (1980) placed particular emphasis on the establishment of a prima facie case, the plaintiff's primary burden of proof in an ADEA action. Schickman (1981) has contrasted the advantages and disadvantages of establishing the prima facie case before a jury trial.

Several authors have analyzed the types of evidence that is used in satisfying the burdens of proof in ADEA litigation. Faley, Kleiman and Lengnick-Hall (1984) reviewed 152 court cases to determine the type and extent of the evidence sufficient to establish a complaint of age discrimination. Schuster and Miller (1981a) have evaluated the evidentiary role of employers' performance appraisal systems in ADEA court actions. The same authors analyzed the role that the personnel practices of an employer can have in defending against an ADEA claim (Schuster & Miller, 1981b). Also, the use of statistics in proving or disproving a claim of age discrimination in employment has received considerable attention (e.g., Harper, 1981).

Ryan (1981) has scrutinized the bona fide occupational qualification exemption to the Act, which can be raised by employers as a defense when engaged in ADEA litigation. The experience of the employee benefit plan defense of the ADEA has also been analyzed in comparison with the experience of a similar exemption in a state age discrimination in employment law (Heller, 1980). Additionally, as the Act has matured, increased notice has been given to the types of remedies available to successful ADEA plaintiffs (Anker, 1976).

Statutory and case law analysis has been the exclusive mode of legal research for generations and has proven to be an effective research tool in countless instances. When faced with an extensive piece of economic and social legislation, however, traditional legal analysis is constrained in its ability to adequately draw inferences on the multi-faceted aspects of such legislation. Brandon and Synder (1985) summarized federal court ADEA cases by classifying the cases into a matrix of specific personnel actions by judicial decision.1

Additionally, Feild and Holley (1982), have utilized content analysis in evaluating the performance appraisal systems used by employers in sixty-six court cases, involving primarily race and sex discrimination in employment. This empirical study enabled the authors to show how the outcome of employment discrimination actions can be better predicted, based on a series of characteristics which may or may not be found in a number of performance appraisal systems. This study differs from Feild and Holley's work in that it goes beyond examining performance appraisal systems into all characteristics of the legislation, as well as including the experience of the EEOC and eight state agencies within its scope.

The present research benefited from preliminary efforts to develop the first comprehensive, empirically-oriented methodology for the investigation of the operation and impact of age discrimination in employment litigation. Schuster (1982) developed this methodology by employing content analysis. His methodology was utilized in this study.

Several potential areas of public policy were addressed in Schuster's preliminary effort. These included the indication that there is greater use of the ADEA by professional and managerial men, the differences shown to exist by geographic region, the expanded number of cases evidenced in more recent years, and the fact that most cases have been the result of loss of employment as opposed to a number of lesser personnel issues.

This research moved beyond Schuster's initial study of ADEA cases in four ways: (1) a significantly larger population of court cases were analyzed; (2) the operation and impact of age discrimination in employment laws at both the Federal (EEOC) and at the state agency level were assessed; (3) a comprehensive analysis using sophisticated statistical techniques to identify the legal, extra-legal, and socioeconomic factors influencing the filing and outcome discrimination in employment complaints; and (4) a research framework and large data base was established for future analysis of the experience of age discrimination in employment legislation in the United States.

Structure of the Report

The report contains fifteen chapters. Chapter Two presents the methodology employed to conduct the study. Since multiple questions were investigated, a variety of methodological techniques including content analysis, statistical analysis, and traditional legal research approaches were utilized. Chapter Three contains the results of the analysis of federal court decisions. Chapter Four is an extension of Chapter Three in that it takes a body of federal court decisions involving performance appraisal and reviews the facts and case law that has been established. Chapter Five examines the processing of ADEA complaints by the EEOC. Chapters Six through Thirteen examine the processing of age discrimination complaints before eight state administrative agencies: New York, Wisconsin, Illinois, New Jersey, Nebraska, Connecticut, Georgia and Maryland. State agency enforcement is important because procedurally, ADEA complainants must first exhaust their administrative remedies before seeking redress in the federal courts. Moreover, an increasing number of age bias complaints are settled by the state agencies. Chapter Fourteen reports and analyzes the results of survey questionnaires designed to investigate the incidence, manner and degree of organizational retaliation against older workers who file age discrimination in employment complaints. Chapter Fifteen summarizes the overall findings of the study and contains recommendations for future research.

NOTES

1. Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621 et. seq, as amended (1986).

2. Senate Report No. 95-493, 95th Cong. 2nd Sess., reprinted in (1978) U.S. Code Cong. and Admin. News 976.

3. See 29 U.S.C. 631(a).

4. HR 4154, 99th Cong. 132 Cong. Rec. 16850-57 (1986).

5. 29 U.S.C. 623(b).

6. 29 U.S.C. 623(c).

7. See 29 U.S.C. 633(b).

8. Oscar Mayer & Co. v. Evans, 441 U.S. 750 (1979).

9. The complainant can still bring a federal action, subject to a 60-day waiting period following the institution of a state claim.

10. See 29 C.F.R. Section 1601.80 (1985). The deferral states are identified by the EEOC as having a state law and agency that can effectively carry out the legislative objectives of the ADEA. In addition to the District of Columbia, the states with certified and designated statewide deferral agencies are: Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

11. *Exec. Order* No. 11141, 3 *C.F.R.* 112 (1974) and 41 *C.F.R.* 1-12. 1000 to 1.-12 1003 (1975).

12. 29 *U.S.C.* 621-34 [1970 & Supp IV (1974)], as amended by Age Discrimination in Employment Act Amendments of 1978, Pub. L. No. 95-256, 92 Stat, 189 (1978).

13. *Senate Report* No. 95-493, 95th Cong. 2nd Sess., *reprinted* in (1978) *U.S. Code Cong. and Admin. News* 976.

14. Id.

15. 29 U.S.C. 623.

16. 29 U.S.C. 623 (a).

17. 29 U.S.C. 623(b).

18. 29 U.S.C. 623(c).

19. 29 U.S.C. 631 (1967). Amended 1978 Pub.L. No. 95-256, 92 Stat. 189 (1978).

20. 29 U.S.C. 633(a) as amended (1978).

21. HR 4154, 99th Cong. 132 *Cong. Rec.* 16850-57 (1986).

22. HR 4154, 132 *Cong. Rec*., 16851 (1986).

23. 29 U.S.C. 623(f), as amended. See *Marshall v. Westinghouse Electric Corp*., 576 F. 558 (5th Cir. 1978); *Usery v. Tamiami Trails Tours, Inc.*, 531 F. 2d 224 (9th Cir. 1976); *Hodgson v. Greyhound Lines, Inc.* 449 F. 2d 224 (7th Cir. 1974); and *Brennan v. Greyhound Lines, Inc.*, 419 U.S. 1122 (1974); also, *United Airlines, Inc. v. McMann*, 434 U.S. 192 (1977); *Marshall v. Hawaiian Tel. Co.*, 575 F. 2d 763 (9th Cir. 1978); *Thompson v. Chrysler Corp.*, 569 F. 2d 989 (6th Cir. 1978); and *Currier v. Bell Helicopter Textron, Div. of Textron, Inc.*, 567 2d 1307 (5th Cir. 1978).

24. 29 U.S.C. 623 (f)(1).

25. See, e.g. *Burwell v. Eastern Airlines, Inc.*, 633 F. 2d 361, 370 n.15 (4th Cir. 1980); *EEOC v. City of St. Paul*, 500 F. Supp. 1135 (D. Minn. 1980); also, 29 C.F.R. 1625.6(a), 46 Fed. Reg. 47,726 (1981).

26. See, e.g. *Hodgson v. Greyhound.Lines, Inc.*, 499 F. 2d 859 (7th Cir. 1974), Cert. denied, 419 U.S. 1122 (1975). Another version of this "rational basis" test requires that safety be the essence of the particular business involved. See, e.g. *Usery v. Tamiani Tours, Inc.*, 531 F.2d 224 (5th Cir. 1976).

27. Williams v. Hughes Helicopters, Inc.; CA 9, Nos. 85-6418 and 85-6428, Dec. 24, 1986.

28. See, e.g., Smallwood v. United Airlines, Inc., 26 FEP Cases 1376, 1379 n. 7 (4th Cir. 1981), where the court stated that "economic considerations . . . cannot be the basis for a BFOQ - precisely those considerations were among the basis of the Act."

29. See, e.g., EEOC v. County of Allegheny, 26 FEP Cases 1087, 1091 (W.D. Pa. 1981).

30. See, e.g. Price v. Maryland Casualty Co., 561 F. 2d 609 (5th Cir. 1971); Mastie v. Great Lakes Steel Corp., 424 F. Supp. 1299 (E.D. Mich. 1976).

31. 29 U.S.C. 623(f)(2), as amended.

32. See, e.g., Sexton v. Beatrice Foods Co., 30 F. 2d 478 (7th Cir. 1980); Brennan v. Taft Broadcasting, 500 F. 2d 212, 217 (5th Cir. 1974).

33. See, e.g. Hays v. Republic Steel Corp., 12 FEP Cases 1640 (N.D. Ala. 1979), modified, 531 F. 2d 1307 (5th Cir. 1976).

34. USDC Ill; No. 82-C-7277, January 7, 1987.

35. HR 4154, 132 Cong. Rec., 16856 (1986).

36. 29 U.S.C. 626(d)(1976), as amended by Age Discrimination in Employment Act Amendments of 1978, Pub L. No. 95-256,4(d)(1), 92 Stat. 189. Prior to July 1, 1979, the Secretary of Labor was responsible for enforcement of the ADEA. On July 1, 1979, enforcement responsibility was transferred to the EEOC, pursuant to Reorganization Plan No. 1 of 1978, 43 Fed. Reg. 19,807. (1978).

37. 29 U.S.C. 626(d).

38. 29 U.S.C. 626(d).

39. See, e.g., Kelly v. American Standard, Inc., 640 F. 2d 974 (9th Cir. 1981).

40. See, e.g., Wehr v. Burroughs Corp., 619 F. 2d 276 (3rd Cir. 1980).

41. See, e.g., Kelly v. American Standard, Inc., 69 F. 2d at 980.

42. See, e.g., Cova v. Coca Cola Bottling Co. of St. Louis, 574 F. 2d 958 (8th Cir. 1978).

43. 29 U.S.C. 211(b), 216, 217.

44. See, "Age Discrimination in Employment Suits: A Practical Guide," 81 W. Virg. L. Rev. 503 (1979).

45. Lindsey v. Southwestern Bell Telephone Co., 546 F. 2d 1123, 1124 (5th Cir. 1977); Wilson v. Sealtest Foods Division of Kraftee Corporation. 501 F. 2d 84, 86 (5th Cir. 1974).

46. 411 U.S. 792, 802; 93 S. Ct. 1817, 1924; 362 L. Ed 2d 668, 677-678 (1973).

47. See, e.g., Williams v. General Motors Corp., 656 F. 2d 120 (5th Cir. 1981); McCuen v. Home Ins. Co., 633 F. 2d 1150 (5th Cir. 1981).

48. See, e.g., Sutton v. Atlantic Richfield, 646 F. 2d 407 (9th Circ. 1981); Loeb v. Textron, 600 F. 2d 1003, 1013 (1st Cir. 1979).

49. United States v. Wiggins, 39 U.S. (14 Pet) 334, 347, 10 L. Ed. 481, 488 (1840); Marshall v. Goodyear Tire & Rubber co., 554 F. 2d 730, 735 (5th Cir. 1977).

50. Marshall v. Goodyear Tire & Rubber Co., 554 F. 2d at 735.

51. Laugesen v. Anaconda Co., 510 F. 2d 301, 312 (6th Cir. 1975). For a slightly different version of the prima facie fomulation, see Cova in Coca-Cola Bottling Company of St. Louis, Inc., 574 F. 2d 958, 959(8th Cir. 1978).

52. See, e.g., Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253-254 (1981) (Title VII).

53. See, e.g., Douglas v. Anderson, 27 FEP Cases 47, 50 (9th Cir. 1981).

54. Hodgson v. Sugar Cane Growers, 5 FEP 1136 (D.C.Fla. 1973); Buchholz v. Symons Manuf. Co., 445 F. Supp 706 (E.D.Wis. 1978).

55. Hodgson v. First Federal Savings and Loan Assoc., 455 F. 2d 818, 821-822 (use of statistical evidence showing that for more than one year all 35 individuals hired by defendant as tellers were younger than 40, while defendant's interview notes read; "too old for teller," where protected persons were interviewed, and defendant specified to employment agency that only teller trainees between the ages of 21 and 24 were sought); also, Mistretta v. Sandia Corp. 15 FEP 1690 (D. Ct.N.M. 1977); (proof of discriminatory conduct through use of statistical evidence showing salary and layoff policies of employer to be age biased).

56. Marshall v. Goodyear Tire and Rubber Co., 554 F. 2d 730.

57. O'Connell v. Ford Motor Co., 11 FEP 1471 (E.D. Mich., 1975).

58. Hodgson v. First Fed. Savings and Loan Assoc., 455 F. 2d 818, 822-823; see, generally, Edelman and Siegler, (1978) at p. 185-186.

59. Moore v. Sears, Roebuck and Co., 464 F. Supp. 357, (E.D. Georgia 1979).

60. Bittar v. Air Canada, 512 F. 2d 58L (5th Cir. 1975); Hodgson v. First Federal Savings and Loan Association, 455 F. 2d 818, 822 (5th Cir. 1972); also, Zell v. United States, 472 F. Supp. 356, 359 (E.D. Pa. 1979).

61. Price v. Maryland Casualty Co., 561 F. 2d 609 (5th Cir. 1977); Rodriguez v. Taylor, 569 F. 2d 1231, 1239 (3d Cir. 1977).

62. See, e.g., Smith v. University of North Carolina, 632 F. 2d 316, 337 (4th Cir. 1980).

63. McDonnell Douglas Corp. v. Green, 411 U.S. at 802 (Title VII).

64. See, e.g., Laugesen v. Anaconda Co., 510 F. 2d 201; Mastie v. Great Lakes Steel Corp., 424 F. Supp 1299, 1321-22 (E.D. Mich. 1976); 29 C.F.R. 860. 103(c).

65. Employers certainly consider such factors, but usually only after the older worker has been perceived as increasingly less productive. This threshhold decision is a qualitative judgment easily affected by the corporate value system. See Kendig, Age Discrimination in Employment, pp. 10-11.

66. See, for example, Buchholz v. Symons Manufacturing Co., 445 F. Supp. 706 (E.D. Wis. 1978); Scofield v. Bolts and Bolts Retail Stores, Inc., 20 EPD 12,299 (S.D. N.Y. 1979); Mistretta v. Sandia Corp., 18 EPD 5527 (D. N.M. 1978).

67. 29 U.S.C. 622(a).

68. Note, "EEOC Reports Increase in Age Discrimination Complaints," Aging and Work, Vol. 4, No. 4 (Fall 1981), pp. 281-82.

CHAPTER TWO

METHODOLOGY

This research involved the study of three sets of adjudications arising under federal and eight state age discrimination in employment laws: (1) federal court decisions decided under the ADEA; (2) EEOC cases under the ADEA; and (3) state agency decisions under the enabling authority of state legislation.

Federal Court Decisions

The court cases were analyzed using a scientific methodology known as content analysis. Content analysis is a research technique which attempts to quantitatively classify a body of information into a system of categories (Holsti, 1969). Content analysis has been frequently used outside the sphere of legal research by journalists and sociologists to analyze the content of American newspapers (Berelson, 1954), by students of literature to study stylistic features of English poetry and prose (Berelson, 1954), and by political scientists and social psychologists to investigate a number of problems involving public opinion and propaganda (Crano & Brewer, 1973).

This research adapted a methodology used earlier by Kort (1957, 1963, 1966). Kort utilized content analysis in his investigations of fact patterns in United States Supreme Court cases involving involuntary confessions and the right to counsel. In addition, he has examined workers' compensation cases before the Connecticut Supreme Court.

The present study of the ADEA developed through four stages: (1) identifying the entire population of reported ADEA cases heard in federal courts; (2) development and pretesting a coding form; (3) content analysis of the cases; and (4) statistical analysis of the results.

Identification of ADEA Cases

The LEXIS system of federal court cases was searched using broad descriptive words. This insured that the system would retrieve the largest number of cases. During the first phase of federal court case analysis the procedure yielded 1,556 citations to ADEA cases in the federal courts. This population was refined in several ways. First, slip opinions (not yet published in federal court reports) and all cases where another statute was the basis for the principal issue in the case were excluded. These restrictions left 1,151 cases. Second, it was recognized that each individual case could have more than one LEXIS citation. If a case had been heard by more than one forum, both opinions were read together. When this occurred, the higher court's description of the case was recorded. Of the 1,151 cases, 612 have to date been read. Of these 612 cases, 459 were decided on procedural issues and 153 on substantive matters. These 153 cases formed the focus of the first phase of federal court case analysis.

During the second phase of federal case analysis the same procedure was utilized to expand the data base of federal court cases to include cases decided from January 1, 1984 to October 11, 1985. The procedure yielded 86 additional cases which were added to the original data base. This brought the total number of cases studied to 239 thus facilitating further research and documentation of earlier findings (Schuster & Miller, 1984b).

The third phase of federal case analysis utilized the same procedure to add to the federal court data base. The LEXIS search included cases decided from October 12, 1985 to September 30, 1986 and yielded 322 cases. One hundred and fifty cases were slip opinions and eliminated from the data set. The remaining 182 cases were read by two third year law students. Of these 182 cases, 105 were decided solely on procedural grounds and 36 involved other statutes. Therefore, 41 substantive cases were added to the data base for a total of 280 cases analyzed.

Development of the ADEA Case Analysis Coding Form

The coding form was developed based upon prior experience with the ADEA and, by analogy, other anti-discrimination legislation (Schuster, 1982; Schuster & Miller, 1981a). Each variable in the coding form was chosen because of its theoretical importance, whether it could be reasonably drawn from the case, and whether it would lend itself to statistical analysis. The form contained three sections--personal and organizational characteristics of the complainant, the case procedure, and the case determination (see Appendix A). Each form allowed multiple (up to eight) complainants and class actions.

The complainant's personal and organizational characteristics included eight items: (1) Sex, (2) Race, (3) Religion, (4) Age, (5) Occupation, (6) Union Membership, (7) Employer's Financial Structure, and (8) Industry. The case reader's ability to identify and classify each variable depended on the detail provided by the opinion writer and to some extent the importance of the issue in the case. For example, in most cases, the respective federal judge mentioned the complainants' ages but never their religion. Coders inferred the sex of the complainant(s) by examining names and pronouns in the judge's opinion. With all variables in the study, when in doubt, the readers coded "unknown."

The complainant's occupation was subdivided into five categories---professional and managerial, professional and clerical, blue collar, clerical, and retail/sales. Employer's financial structure fit into three categories---family or individually owned, corporate enterprise, or subsidiary of a larger corporation. This section was later expanded to include employment agencies and labor unions. Industries were divided into six major categories, including (1) Public Sector, (2) Manufacturing, (3) Utilities/Transportation, (4) Food/Agriculture, (5) Service, and (6) Retail.

The procedure section included three items: (1) geographic location, (2) initiator of court action, and (3) decision date and court of last resolution. The geographic location variable utilized the boundaries of the federal circuit courts of appeals to divide the country into ten regions plus the District of Columbia. The court action initiation variable covered suits brought by individuals, government or by unions. This variable helped to determine whether individuals bringing their own actions were more successful than those represented by the Secretary of Labor/Equal Employment Opportunity Commission (EEOC).[1] The decision date permitted the detection of change over time.

The case determination section involved three variables--the principal issue in the case, the critical factor in the case, and the party that won the case. The principal issue in the case was defined as the employment problem prompting the controversy, such as hiring, hours of work, training, and retirement. These categories were subdivided for more precise analysis.

The critical factor addressed that aspect of the controversy the court seemed to regard as most important in making its determination:

1. Performance appraised (upheld/denied)
2. Discipline (upheld/denied)
3. Business necessity (jobs legally eliminated/jobs illegally eliminated)
4. Retirement plan (bona fide/illegal)
5. Corporate/Employment policy (discriminatory/non-discriminatory)

6. Bona fide occupational qualification (legal/illegal)
7. Medical evidence (upheld/denied)
8. Other

Finally, the coder indicated which party won or lost.

Content Analysis of the ADEA Cases

Each case was read by two third-year law students. Each evaluated the cases independently. Analyses were compared and differences of opinion noted. A third reader with appropriate legal training read disputed cases. Coding disparities were resolved during discussion sessions. The high levels of agreement can probably be explained by common training and by the straight-forward nature of the variables.[2]

Statistical Analysis

Because of the categorical nature of the variables examined in this study, frequency distributions, cross tabulations and chi-square tests with associated levels of probability were viewed as an appropriate method of data analyses. Due to the size of the case population, and the number of categories involved, the expected value in several categories was less than five. As a result, several categories were combined.

For example, types of personnel actions were redefined as: (1) job status (including hiring, promotion, demotion, and transfer), (2) discharge, and (3) involuntary retirement. To facilitate and strengthen the regional analysis, the First, Second and Third federal circuit courts of appeals were grouped into the Northeast region and the remaining circuits were grouped into the outside Northeast region.

Performance Appraisal Cases

Performance evaluations play a critical role in the outcome of a considerable amount of ADEA litigation (Schuster & Miller, 1984c). Therefore, a set of 50 cases in which performance appraisal was the central issue were studied in depth using both traditional legal case analysis and content analysis.

In order to carry out the content analysis, a coding form was developed with the primary focus the relationship between performance appraisal and the outcome of ADEA decisions (see Appendix B). Previous research by Feild and Holley (1982) identified appraisal system characteristics hypothesized as having an effect on the verdict in employment discrimination cases. These variables were included in the coding form and are as follows: (a) type of organization of the defendant, (b) geographical location of the defendant, (c) frequency that appraisals were conducted, (d) number of evaluators used, (e) evaluators given formal training in appraising job performance, (f) results of appraisals reviewed with employees, (g) evaluators given specific written instructions on how to complete appraisals, (h) purpose of the appraisal system in the organization, (i) job analysis used to develop the appraisal system, (j) type of characteristics used in the appraisal system,

(k) validity information presented on the appraisal system, (l) reliability information presented on the appraisal system, (m) predominant race of the evaluators giving the appraisals, and (n) predominant sex of the evaluators giving the appraisals. Other appraisal system items included in the coding form were: (a) type of evaluation method used and (b) age of the evaluator.

Previous research has shown that the type of personnel action appears to dictate the nature of the proof required to substantiate a nondiscriminatory employer decision (Schuster & Miller, 1984c). Therefore, an item was included on the personnel action that gave rise to the ADEA complaint.

The coding form also included the following items on the complainant's personal and organizational characteristics: (a) age, (b) sex, (c) occupation, (d) union membership, and (e) employer's financial structure. In some cases, coders inferred the sex of the complainant by examining names and pronouns in the judge's opinion.

The case reader's ability to identify and classify each variable depended on the detail provided by the opinion writer and to some extent the importance of the issue in the case. With all variables in the study, when in doubt, the readers coded 'unknown'. Space was included on the form for the reader to describe in more detail the type of performance evidence presented and the reasoning of the court in reaching the decision. Because of the categorical nature of the variables examined in this study, frequency distributions were viewed as an appropriate method of data analysis.

EEOC and State Agency Cases

The age discrimination in employment proceedings of the EEOC from 1979-1986 have been made available to this research project on computer tapes. One tape contains over 100,000 ADEA only charges while the other contains approximately 25,000 combined ADEA, Title VII and Equal Pay Act (EPA) charges.

Eight state agencies provided computer tapes or other record's of their age discrimination in employment complaints. These states are: New York, Wisconsin, Illinois, New Jersey, Nebraska, Connecticut, Georgia and Maryland. These states provide a broad range of jurisdictions with ADEA-type coverage.

Statistical analysis similar to the federal court cases was applied to the EEOC and state agency data. A more detailed discussion of the methodology is presented in Chapters Five through Thirteen.

Organizational Retaliation Survey

This research resulted from survey findings reported by individuals who filed age discrimination in employment complaints with the State of Wisconsin Equal Rights Division. Five hundred fifty individuals were randomly selected from a data base of complainants and were sent surveys (see Appendix C) along with accompanying letters. One hundred twenty-two questionnaires were returned, representing 24 percent of the total mailing list. Anonymity was guaranteed to all respondents.

The survey questionnaire was divided into five general areas. The first section asked questions regarding respondents' demographic background as well as the outcome of their complaints. The second section was designed to elicit respondents' impressions of the reaction of their co-workers in order to measure levels of co-worker support. The third section of the questionnaire studied respondents' perceptions of managerial reaction to their complaints. Management was divided into three levels defined as (1) top management, (2) middle management, and (3) direct supervisor. The fourth section of the questionnaire asked for information regarding the impact of the age discrimination complaint upon respondents' careers, in terms of both previous and current employers. The final section of the questionnaire concerns the respondents perception of the effectiveness of the ADEA remedy.

A total of 54 questions were included in the survey questionnaire. All questions, other than those requesting individual demographic information or "yes/no" responses, presented a range of options for respondents to choose from, including extreme and mid-range options. Six of the questions allowed respondents to mark more than one option. These questions were designed to elicit descriptive information from respondents. In addition, respondents were provided space to comment in their own words on their experience in filing an age discrimination complaint. These comments are presented in Appendix D.

Results from the questionnaires are presented in percentage form in the tables included in Chapter Fourteen. In addition, linear associations between specific variables were studied using bivariate correlation analysis and multiple regression. The methodology of the statistical analysis is presented in greater detail in Chapter Fourteen.

NOTES

1. On July 1, 1979, the responsibility for enforcing the ADEA was transferred from the Department of Labor to the EEOC. Reorganization Plan No. 1 of 1978, 43 Fed. Reg. 19,807 (1978).

2. In contrast to other forms of content-like analysis, judgmental issues were minimal. For example, there was complete agreement on which party won the case. Areas in which an occasional difference occurred were the complainant's occupation, the principal issue in the case, and the critical factor in the court's adjudication of the case.

CHAPTER THREE

FEDERAL LITIGATION UNDER THE ADEA

This chapter presents results from the analysis of 280 federal court cases filed under the Age Discrimination in Employment Act (ADEA). As noted in Chapter Two, all the cases centered on substantive issues of law and fact. No ADEA claims which were decided on a procedural issue were included in this study.

The present analysis focused on (1) the personal and organizational characteristics of the parties, (2) the procedural characteristics of the claim, (3) the regional variations across the case population, and (4) the actual factors utilized in the decision-making process of the federal courts.

The results are presented through the use of frequency distributions, cross-tabulations and chi-square tests. Significant relationships were found among many variables.

Results and Analysis

Frequencies

As Table 1 indicates, the filing of claims under the ADEA has been dominated by males (84.1 percent). Additionally, a majority of the cases are brought by what would be considered professional (including managerial) employees (59.3 percent). The ADEA may be the only recourse for male professionals who believe they have unfairly suffered in an adverse employment action.

This proposition is strengthened by a lack of evidence that would indicate a Title VII-ADEA interaction. That is, except for female complainants, few cases involved plaintiffs who would be protected by both Title VII and the ADEA. For example, the race of the plaintiff was noted in only 26 cases, while plaintiff's religion was mentioned only once. Moreover, the designation of plaintiffs as union members occurred in only 11 percent of the cases. Thus alternative avenues of redress appeared to be limited. At the same time, this lack of a Title VII-ADEA interaction, and the insignificant use of the ADEA by union members, would seem to indicate that for organized or Title VII protected workers there are other means, either speedier or with a greater likelihood of success, for adjudicating one's rights.

In the case of sex, race and religion, Title VII procedures have been more clearly established, in contrast to the ADEA, and thus are less likely to lead to procedural delays and defeats of the types experienced by complainants in ADEA litigation. Moreover, discrimination based on sex, race, or religion has generally been perceived as more invidious in nature than age discrimination, perhaps causing the federal courts to be more sensitive to those forms of discrimination (Blumrosen, 1982).

Three factors probably explain the limited number of cases brought by labor union members. The first factor concerns the availability of, and union members preference for, the

TABLE 1

Numbers and Percentages of Selected Personal Case Characteristics

	Number*	Percent**
A. Sex		
Male	201	84.1
Female	38	15.9
B. Age		
40-49	39	17.8
50-59	118	53.9
60-70	62	28.3
C. Occupation		
Professional	144	59.3
Blue Collar	62	25.5
Clerical	27	11.1
Retail	10	4.1
D. Employer's Financial Structure		
Family/Individually Owned	3	1.1
Corporation	181	66.1
Corporate Subsidiary	23	8.4
Government	67	24.5
E. Industry		
Public Sector	67	25.9
Manufacturing	89	34.4
Utilities/Transportation	42	16.2
Service	31	12.0
Food/Agriculture	14	5.4
Construction	2	.8
Retail	14	5.4

* Differences among the sample sizes for each variable are due to missing data in the cases.
**The percentages may not sum to a hundred due to rounding.

contractual grievance procedure for resolving workplace disputes, reducing the need to resort to the court system. Arbitration cases are likely to be adjudicated more quickly than court proceedings and have a greater or equal likelihood of success (Oppenheimer & LaVan, 1978). The second factor is the widespread inclusion in collective bargaining agreements of seniority provisions (U.S. Dept. of Labor, Bureau of Labor Statistics, 1980), which probably provide greater protection for older workers than is normally found in nonunionized settings. Finally, the courts are generally less willing to adjudicate a claim of employment discrimination that has yet to be processed through available administrative or contractual remedies.[1]

Fifty-four percent of the actions have been filed by those employees between the ages of 50-59. It would appear the Act is receiving the most attention by those employees likely to be in greatest need of protection. That is, those older workers who: (1) have reached the end of their career path with a particular organization, (2) are priced higher than younger workers, (3) would find it difficult to start over, and (4) are not yet close enough to the full security of retirement benefits. This is particularly important in light of research concluding that workers in the 55 and over age group have the highest rate of discouraged workers of any age group (Rosenblum, 1975), and the general finding that the risk of long-term unemployment increases significantly for non-working males reaching the age of 50 (Bogiletti, 1974).

It appears an incorporated organization is the defendant in the vast majority of ADEA cases (74.5 percent). Since most ADEA cases are brought by male professional/managerial employees, it may be expected that they be found working for generally larger, more developed organizations, as opposed to family or individually-owned businesses. Among industries, the public sector agencies (25.9 percent) and manufacturing concerns (34.4 percent) attracted the majority of ADEA litigation. The former figure may be viewed as somewhat surprising, in light of government's responsibility to adhere to laws it is charged with enforcing.

In the procedural analysis, it should be first noted from Table 2 that the majority of cases originated outside the Northeast (78.9 percent). This may in part be a reflection of the lower union penetration in the South and West regions, particularly the states of the Fifth circuit, where 15 percent of all cases are initiated.[2] This lack of unionization means an absence of grievance procedures or seniority clauses that would ordinarily serve to protect older workers. In addition, 19 of the 20 right-to-work states can be found in the South and West regions (Bureau of Labor Statistics, 1980). The employment environment created by such laws may encourage employers to be more aggressive in discharging or forcing the retirement of older workers. A final contributing factor may be the absence of ADEA deferral states among the South and West regions.[3] A deferral (or referral) state is recognized by the EEOC as having a law prohibiting age discrimination, with a state authority empowered to grant relief. In the South, for example, only three states are presently designated as referral states.[4]

TABLE 2

Numbers and Percentages of Selected Procedural Case Characteristics

	Number	Percent
A. Geography		
Northeast	59	21.1
Outside Northeast	220	78.9
B. Suit Initiated by		
Individual	223	80.2
Government	55	19.8
C. Court of Last Resolution		
District Court	140	56.2
Court of Appeals	106	42.6
Supreme Court	3	1.2
D. Date of Decision		
1968-1978	71	25.4
1979-1980	54	19.4
1981-1982	56	20.1
1983-1984	42	15.1
1985-1986	56	20.1

As might be expected in view of the burdensome cost in time, money and manpower for engaging in employment litigation, the government files only a selected number of suits (19.8 percent)[5], with individuals initiating the majority of court actions (80.2 percent). Also in recognition of the above cited factors, most

ADEA litigation ends at the district court level (56.2 percent).

One interesting finding was the increase in ADEA cases in recent years. The first 11 years of the legislation (1968-1978) account for 25.4 percent of the substantive cases, with the remaining cases (74.6 percent) resolved in the period 1979-1986. In the early years of the ADEA, the federal courts were required to establish many procedural rules. The increase in substantive cases in recent years suggests that the procedural rules for ADEA cases are in fact being largely settled.

Also, it is important to note that the 1979-1986 period represents the years following the 1978 Amendments to the ADEA in which Congress attempted to clarify several procedural issues. Examples include the granting of the right to a jury trial, redefining the notice of intent to sue requirements, and prohibiting mandatory retirement before age 70.[6] Such changes were intended to strengthen a plaintiff's substantive claim. At the same time, the amendments served to publicize the rights of older workers, thus contributing to the increase in ADEA litigation.

Additionally, the transfer of enforcement responsibility for the ADEA to the EEOC in July, 1979, provided the Act with a higher profile and an enforcement agency experienced in employment discrimination claims. Later discussion touches upon the actual impact of these events.

The results shown in Table 3 establish that termination of employment has clearly been the primary personnel action precipitating ADEA complaints.[7] Various forms of discharge and involuntary retirement accounted for 67.5 percent of the cases. Older workers may tolerate less severe forms of age-based employment discrimination, and are generally willing to engage in litigation only when separation occurs.

Table 3 highlights the critical factors the courts utilize in reaching their decisions.[8] The principal determinative factors in ADEA cases appear to have been the appraisal of performance (35.4 percent), forced retirement of employees under a retirement plan (17.9 percent), the legality of eliminating employees' jobs (12.9), corporate policies toward dealing with older workers, which generally involves termination or forced retirement (10.0 percent) and bona fide occupational qualification (10.0 percent).

The finding that performance appraisal is a critical factor in the courts' rationale in over 35 percent of the cases holds particular significance. The need for well-structured, fair performance appraisal systems would seem to be required in order to fulfill the objectives of the ADEA.[9] Yet as past research indicates, the use of such appraisal systems is not widespread (Schuster & Miller, 1981b). Federal courts appear to be deciding on a significant number of ADEA claims involving the issue of performance, without the benefit of formalized, well-documented appraisal systems.

Table 3 also reports that on a national basis, employers have been victorious in ADEA actions 67.7 percent of the time.

TABLE 3

Numbers and Percentages of Determination Case Characteristics

	Number	Percent
A. Principal Issue		
Discharge	119	42.5
Involuntary Retirement	70	25.0
Job Status	66	23.6
Compensation	12	4.3
Other	13	4.6
B. Critical Factor		
Performance	99	35.4
Retirement	50	17.9
Business Necessity	36	12.9
Policy	28	10.0
BFOQ	28	10.0
Other	33	11.8
C. Outcome		
Employer Wins	176	67.7
Employee Wins	84	32.3

The employer success rate may support Galanter's proposition that frequent litigators have advantages over less frequent litigators (Galanter, 1979). Thus, employing Galanter's taxonomy, the employee-complainant may be considered a "one-shotter," and the employer-defendant a "repeat-player." Because of their position and greater expertise, repeat-players are expected to "settle" weaker cases and litigate strong cases. It may be that employees have a more favorable prelitigation success rate. Additional research on the experience of state and federal antidiscrimination agencies would permit examination of the pretrial settlement issue.

Cross-Tabulations and Chi-Squares

Table 4 provides a summary of the impact of these categories of case characteristics (personal, procedural and determinative) on the outcome of litigation, that is, which party succeeds.

TABLE 4

Cross-Tabulations

Variables	N**	Chi-Square	Probability
A. Personal Characteristics			
1. Outcome x Sex	220	11.161	.001+
2. Outcome x Age	202	0.411	.814
3. Outcome x Occupation	260	5.928	.205
4. Outcome x Employer's Financial Structure	254	4.032	.258
5. Outcome x Industry	260	12.022	.150
B. Procedural Characteristics			
1. Outcome x Geography	259	0.306	.580
2. Outcome x Suit Initiated by	258	11.122	.001+
3. Outcome x Decision Date	259	15.266	.576
C. Determination Characteristics			
1. Outcome x Principal Issue	260	5.214	.266
2. Outcome x Critical Factor	260	12.960	.044*

* $p \leq .05$ + $p \leq .01$

**Differences among the sample sizes for each variable are due to missing data in the cases.

Female plaintiffs had considerably greater success in ADEA suits than their male counterparts. Females were victorious 54 percent of the time, significantly greater than the 26 percent success rate experienced by men ($X^2 = 11.161$, $p = .001$). At least three factors may have influenced this result.

First, while none of these cases were decided upon a Title VII sex discrimination claim, the fact that women have been granted the added protection of Title VII is undoubtedly not lost upon the courts. This added expression of legislative concern may lead the courts to be particularly sensitive to personnel actions affecting women, and thus more likely to decide on their behalf (Blumrosen, 1982).

Second, most of cases brought by females (45 percent) involved a job status issue (hiring, promotion, transfer or demotion), while only 20 percent of the male plaintiffs raised a job status issue ($X^2 = 12.120$, $p = .016$; see Table 5). The courts may be less willing to intrude upon management prerogatives when the personnel action has major financial or productivity-related ramifications, such as discharge or retirement. At the same time, the right to be hired for a job that one is qualified for is a central theme in employment discrimination laws.

In addition, female plaintiffs fell into the clerical occupation category 47 percent of the time, while male plaintiffs were considered clerical-type workers just 4 percent of the time

(X^2 = 67.104, $p < .001$; see Table 5). It may be that at the low-paying clerical level of jobs, companies are not as attentive to performance appraisal issues, or situations that could breed claims of discrimination. Thus the organization is less prepared to defend actions brought by those type employees.

There would appear to be no effect of age (X^2 = 0.411, p = .814) or occupation (X^2 = 5.928, p = .205) on the outcome of cases. Nor does an employer's financial structure (X^2 = 4.032, p = .258) industry (X^2 = 12.022, p = .150), or geography (X^2 = .306, p = .580) appear to play a role in determining outcome. As might be expected, there was a somewhat significant impact on outcome when the government sued on behalf of an individual. With the advantage of picking and choosing among claims, and the added expertise and staff for bringing employment discrimination suits, the federal government succeeded 52 percent of the time, while individual plaintiffs were victorious only 28 percent of the time (X^2 = 11.122, p = .001).

While not statistically significant, it should be noted that the employees' rate of success was higher when the principal issue in the case involved job status (42 percent) or compensation (40 percent, X^2 = 5.214, p = .266). However, when involuntary retirement or a discharge was at issue, employees succeeded only 32 percent and 28 percent of the time, respectively. Again, employers may be less attentive to job status matters, as opposed to the more dramatic actions of discharge and retirement. Also the federal courts reluctance to intrude on major management prerogatives such as dismissal may hold true in general, and not just for females, as noted earlier.

When the critical factor in the court's decision centered on the legitimacy of an involuntary or early retirement, the employer succeeded 73 percent of the time ($X^2 = 12.960$, $p = .044$). However, when the critical factor involved a company-wide policy not related to retirement, but adversely affecting the older worker, employers were successful only 43 percent of the time. Thus, it would appear that while the courts are hesitant to intrude upon a traditional management prerogative, they will act upon the maintenance of an arbitrary, across the board discriminatory policy. The courts' rationale in not remaking an organization's retirement decisions may also be facilitated by the less than dire consequences that result from such decisions. That is, the existence of adequate pensions plans soften the blow to employees, while not presenting the court with a choice between management rights and an individual's right to a livelihood.

It should be noted that the analysis failed to find a significant relationship between outcome and the decision dates of cases ($X^2 = 15.266$, $p = .576$). With the 1978 Amendments to the ADEA and the transfer of enforcement responsibility to the EEOC in mid-1979, it could have been hypothesized that plaintiffs would achieve greater success from 1979 onward. In fact, plaintiffs pre-1979 rate of success (35 percent) was slightly decreased from 1979 to 1986 (31 percent), though not in a statistically significant fashion. It is therefore questionable whether the amendment of the late 1970's will have the anticipated enforcement effect.

Table 5 provides some additional insights into the effects of sex, age, occupation, region and principal issue on age discrimination in employment litigation. The majority of males tended to work for a corporation or subsidiary of a large corporation (80 percent, $X^2 = 18.181$, $p < .001$) engaged in manufacturing (36 percent, $X^2 = 26.162$, $p < .001$) while fifty percent of the females worked in the public sector. Among males, 92 percent of the cases were initiated by the individual compared to 79 percent among females ($X^2 = 5.352$, $p = .021$). Lastly, among males, forty percent of the cases have been brought since 1983 whereas for females only 24 percent of the cases have been initiated during this time period ($X^2 = 26.918$, $p = .059$).

As might be expected, there was a significant difference in the relationship between the ages of plaintiffs and the principal issues raised in the respective cases. Plaintiffs in the 50-59 age group were responsible for 70 percent of the discharge cases and 44 percent of the job status cases ($X^2 = 76.167$, $p < .001$). Similarly, the 60 and above age group brought 64 percent of the retirement claims.

Within the youngest age group (40-49), 51 percent of the cases involved job status issues, while among all cases brought by those age 50-59 and above, 58 percent concerned discharge.

Involuntary retirement as expected, was the principal issue raised the most (55 percent) by those age 60 and over. As noted earlier, while the plaintiffs were generally male, there was a common variation in age among plaintiffs of either sex ($X^2 = .643$, $p = .725$).

Similarly, there was a significant difference in the relationship between the ages of the plaintiffs and the critical factors the courts utilized in making their decisions. The principal determinative factors in these cases appear to be performance for both the 40-49 age group (36 percent) and the 50-59 age group (53 percent) and forced retirement of employees under a retirement plan for those 60 years and above (37 percent, $X^2 = 63.595$, $p < .001$).

The results indicated a significant difference in the relationship between the occupation of the plaintiff and the principle issue raised in the respective cases. The cases involving the majority of plaintiffs who were employed in a professional or managerial capacity were precipitated by termination of employment through either discharge or involuntary retirement (71 percent, $X^2 = 57.386$, $p < .001$). Strikingly, termination of employment was the only personnel action precipitating ADEA complaints by retail employees. For blue collar employees termination of employment accounted for 56 percent of cases with job status actions bringing about 27 percent of complaints. Plaintiffs employed in a clerical

TABLE 5

Cross-Tabulations

Variables	N	Chi-Square	Probability
A. General			
1. Sex x Occupation	239	67.104	.000+
2. Sex x Age	207	0.643	.725
3. Sex x Principal Issue	239	12.120	.016**
4. Sex x Employer's Financial Structure	233	18.181	.000+
5. Sex x Industry	239	26.162	.001+
6. Sex x Suit Initiated	238	5.352	.021**
7. Sex x Year	239	26.918	.059
8. Age x Principal Issue	219	76.167	.000+
9. Age x Employer's Financial Structure	213	14.290	.027**
10. Age x Suit Initiated	217	9.778	.008+
11. Age x Critical Factor	219	63.595	.000+
12. Occupation x Employer's Financial Structure	274	28.821	.004+
13. Occupation x Industry	280	78.584	.000+
14. Occupation x Suit Initiated	278	20.319	.000+
15. Occupation x Year	279	82.242	.115
16. Occupation x Principal Issue	280	57.386	.000+
17. Occupation x Critical Factor	280	81.250	.000+
18. Principal Issue x Critical Factor	280	235.658	.000+
B. Geographical			
1. Region x Sex	238	0.550	.458
2. Region x Occupation	279	2.672	.614
3. Region x Suit Initiated by	277	0.856	.355
4. Region x Principal Issue	279	2.990	.560
5. Region x Critical Factor	279	5.126	.528

** $p \leq .05$ + $p \leq .01$

position initiated complaints primarily because of termination of employment (56 percent) and job status (41 percent).

In addition, there was a significant difference in the relationship between the primary personnel action involved in the complaint and the critical factor utilized by the court in reaching its decision. When the personnel action was discharge, in the majority of cases the principal determinative factor was appraisal of the employee's performance (54 percent, $X^2 = 235.658$, $p < .001$). When the case was brought because of involuntary retirement the court in 59 percent of the cases primarily considered the organization's retirement plan. In 36 percent of the cases where job status (hiring, promotion, transfer or demotion) was the issue the principal determinative factor was performance appraisal.

Conclusions

Through analysis of the personal characteristics of plaintiffs in ADEA litigation, it is seen that the Act has become the central legislative device of white, male professionals in attacking arbitrary personnel decisions. While this seems inevitable, such use of the Act does raise the spectre of conflict between the principles of the ADEA and those of Title VII (Blumrosen, 1982; McKenry, 1981). That is, members of the protected classes of both antidiscrimination laws may be contending for the same jobs. Thus, the EEOC may find itself torn between the enforcement of two pieces of major social legislation.

While men were the most frequent litigants, women were the more successful. In this instance, the goals of the ADEA may indeed be furthered by females' particular place within Title VII legislation.

As might be expected, the federal government (Secretary of Labor/EEOC) has brought considerably fewer ADEA claims than individuals. At the same time, the greater resources of the government has resulted in a greater success rate than that of individual plaintiffs.

Across sexes, the principal issues of discharge and involuntary retirement have been responsible for the bulk of substantive ADEA litigation. In view of the seriousness of such personnel actions, this could be expected. However, among females alone, the majority of cases concerned job status issues. Perhaps the traditional position of women in low-paying clerical-type positions make them less beneficial targets for dismissal, but easier workers to manipulate.

There was no significant relationship between case outcome and the principal issue. Yet, courts were more likely to side with employees when they could find a pervasive policy of discrimination, as opposed to isolated incidents.

The geographical (or regional) analysis indicates that the majority of cases originated outside the Northeast. Again, the absence of strong union pressure, along with right-to-work laws, make the South and West regions favorable breeding grounds for employment discrimination litigation.

A major issue of substantive law concerns the evaluation of an older worker's performance. Performance is a critical factor in federal court decisions over 35 percent of the time. Thus it may be reasonable to assert that Congress through legislation, or the federal courts by judicial fiat, require the use of formalized performance appraisal systems in order to support an employer defense of nondiscriminatory conduct.

NOTES

1. See, for example, Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974).

2. For example, within the Fifth circuit, only 16.5 percent of the nonagricultural workforce is unionized. Handbook of Labor Statistics (1980).

3. See 29 U.S.C. Sec. 633(b).

4. See 29 C.F.R. Sec. 1626.10 (1981).

5. However, many of the government initiated suits are on behalf of multiple complainants or take the form of a class action.

6. Age Discrimination in Employment Act Amendments of 1978, Pub. L. No. 95-256 92 Stat. 189 (1978).

7. The principal issue describes the personnel action which gave rise to the ADEA complaint. For example, "Job Status" refers to any personnel action involving hiring, promotion, demotion or transfer.

8. The "Critical Factor" refers to the determinative factor the court relied on in making their decision. For example, "Performance" would be a critical factor when the court's judgment was ultimately based on whether the employee's performance was established as inadequate by the employer or satisfactory by the employee. "Retirement" would be a critical factor when the court rests in decision on whether the particular retirement process was acceptable under the ADEA.

9. In Cova v. Coca-Cola Bottling Co. of St. Louis, 574 F. 2d 958 (6th Cir. 1978), the plaintiffs argued unsuccessfully that formal performance appraisals shoudl be required as a matter of law when performance is an issue. The court held there was no basis for the argument in the wording of the ADEA.

CHAPTER FOUR

PERFORMANCE APPRAISAL AND THE ADEA

Recent studies (Doering, Rhodes & Schuster, 1983) have highlighted the difficult human resource problems that lie ahead as the workforce ages. As the workforce matures the importance of the Age Discrimination in Employment Act (ADEA)[1] will increase. The stated objective of the ADEA, "to prohibit discrimination in employment on account of age in such matters as hiring, job retention, compensation, and other terms and conditions of employment," will be severely tested.[2]

The realization of this objective inevitably depends on the willingness and ability of organizations to measure and evaluate performance in a nondiscriminatory manner. Age discrimination claims that question an employer's assessment of an employee's performance are analyzed in this chapter. It is increasingly clear that use of an employer's formal personnel evaluation records can play a crucial role in the decision-making process of the courts (Feild & Holley, 1982). Moreover, as noted in the previous chapter, the employee's performance was the critical factor in over 35 percent of the cases studied.

This chapter will examine how older employees are evaluated, the use of an employer's appraisals and evaluations of the older employee's on-the-job performance, and the roles such evaluations play in Federal court decisions. Also assessed is whether the performance of older employees is being evaluated by the fairest and most-up-to-date methods of performance appraisal available.

The most commonly used and modern appraisal methods are briefly described. An explanation of the burden of proof an ADEA complainant has to carry before succeeding in an age discrimination claim and the evidence defendants have presented to defend an ADEA claim successfully also are included. Next we focused on ADEA decisions in the federal courts with a discussion of ADEA claims organized by the three most common forms of personnel actions that give rise to ADEA complaints: (1) promotion/demotion; (2) layoff/retirement; and (3) discharge. This is followed by a discussion of the quantitative analysis of these ADEA court cases.

Performance Appraisal Techniques

Performance appraisal is the systematic evaluation of a worker's job (Beach, 1975; Glueck, 1978; Sikula, 1976). The most common performance evaluation methods include: (1) graphic rating scales; (2) employee comparisons; (3) checklists; (4) free form essays; and (5) critical incidents. Because many organizations do not use formal methods of evaluation, informal or ad hoc methods must also be considered.

Graphic rating scales are the oldest and most widely used employee appraisal procedure. The rater is provided with a printed form that includes a number of employee qualities and characteristics to be judged, such as: Quantity and quality of work, job knowledge, cooperativeness, dependability, industry, attitude, initiative, leadership, creative ability, decisiveness, analytical ability and emotional stability. The traits are evaluated on a continuous (a continuum) or discontinuous (consisting of appropriate boxes or squares to check) graphic scale. The scale may be represented by and be broken down into three, five, seven, 10 or more parts or points.

Employee comparison evaluation procedures consist of three types: Rank-order comparison method, paired comparison technique and forced-choice distribution procedure. The rank-order comparison method requires the rater to rank subordinates on an overall basis from highest to lowest according to their job performance and value to the organization.

The paired comparison technique is a mechanism for achieving a rank order listing of employees in a more systematic manner. It requires the comparison of each employee with all other subordinates in the group, one at a time. The number of times each individual is preferred over another is tallied, thus yielding the rank order for the entire group.

The forced-choice distribution procedure is an attempt to prevent supervisors from clustering their employees at a particular point on the scale. It requires a supervisor to distribute the ratings in a pattern that conforms to a normal frequency distribution. The supervisor must allocate 10 percent of the employees to the top end of the scale, 20 percent in the next highest category, 40 percent in the middle bracket, 20 percent in the next lower category and 10 percent in the bottom grouping.

Checklist methods involve two systems: The weighted and the forced-choice. The former consists of a large number of statements that describe various types and levels of behavior for a particular job or family of jobs. Every statement has a weight or scale value attached to it. When rating an employee, the supervisor checks all statements that most closely describe the individual's behavior. The rating sheet is then scored by averaging the weights of all the descriptive statements checked. The forced-choice checklist involves a supervisor choosing from a group of four or five statements that relate to a certain job task, then choosing the most and least descriptive statements as they pertain to each employee.

Free-form essays require the supervisor to provide in writing his/her impressions of the employee. Similar to this method is the critical incidents technique that requires recording of noteworthy occurrences related to the employee's job-related behavior and performance. Whenever an employee's behavior of performance is exceptionally good or inadequate, the supervisor is expected to note it, with the record as a reference when formal performance evaluations are conducted. A formalized adaptation of the method is called the Behaviorally Anchored Rating Scale (BARS). The BARS system requires the development of job-related descriptions of good and bad performance. Employee ratings are based on the frequency of the described types of performance.

Informal performance evaluation methods have no standard description associated with them. Such evaluation can range from a supervisor making a judgment by merely summing his/her observations over a period of years to an employer integrating information form various sources, such as supervisors, fellow employees or written notations, in order to make an evaluation. The point to remember is that to be informal, an evaluation method will involve little or any structure and is rarely, if ever, based on specific, stated evaluation criteria.

All of the performance evaluation methods described have their advantages and disadvantages. The graphic rating scale, for example, is easy to construct, implement and is readily understood by employees and supervisors. But the scale gives an illusion of precision merely because definite numbers are attached to a supervisor's opinions.

A major weakness of the employee comparison method is that because employees are ordinally ranked the method does not reveal the actual difference between persons ranked adjacently. The forced-choice distribution procedure has an additional weakness. If the entire group of employees is of similar abilities, the procedure will not give a fair representation of the difference in skills and abilities among the various employees. The group abilities may not conform to the normal curve, as assumed by the procedure, but rather to a skewed curve.

The checklist methods have the advantage of making supervisors think in terms of very specific kinds of behavior. But where there is a large number of diverse jobs, installation costs for the checklist methods can run quite high. Free form essays are, in contrast fairly inexpensive though they require a great deal of time and effort by supervisors if done properly.

Use of the critical incidents technique has the effect of encouraging supervisors to record and categorize employee behaviors frequently. The observation of facts deemphasizes the subjectivity of opinions. However, the critical incidents techniques can lead to overly close supervision, resulting in poor employee morale if employees feel that every move they make is observed and recorded.

Four Appraisal Criteria Urged

While an employer may select any form of appraisal system, Feild and Holley (1982) suggest that four criteria be met: (1) specific written instructions should be given to the evaluators; (2) the system should behaviorally, as opposed to trait, oriented; (3) that individual jobs be thoroughly analyzed to develop the system; and (4) provide employees with an opportunity to review these results.

Any criticism directed towards informal performance evaluation would necessarily depend on the particular informal evaluation tools utilized. Generally, informal evaluation is open to attack on several fronts. There can be the problem of a lack of stated evaluation criteria, inconsistent appraisal of employees and an absence of a written evaluation. Each of these problems can lead to the unfair treatment of employees.

The Prima Facie Case

The fact that an employer has conducted some type of appraisal of an aggrieved employee's job performance becomes significant once the complainant in an ADEA suit has established a prima facie case of age discrimination. This is the minimum level of proof an ADEA plaintiff must offer to avoid having his/her claim dismissed and to shift the burden of evidence to the employer.

At present, three elements are generally required to establish a prima facie case: (1) employee's membership in the protected group; (2) employee effected by personnel action; and (3) employee's ability to do the job.[3] The types of evidence found sufficient to establish a prima facie case in violation of the ADEA can vary; the evidence may consist solely of specific incidents of discriminatory conduct, or there may be a combination of discriminatory conduct and statistical evidence. Once the plaintiff has made out a prima facie case, the defendant has the burden of going forward with evidence that reasonable factors, other than age, were the basis for the alleged discriminatory employment practices.

An employer may meet this burden by showing that the employer action was "for good cause," or by showing that the action was "based on reasonable factors other than age." The employer can also attempt to demonstrate that "age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business." Where the plaintiff is claiming involuntary retirement in violation of the Act, employers previously defended on the basis that the employee was retired pursuant to an early retirement provision of a bona fide pension agreement between the employer and employees, and that the agreement was not ". . . a subterfuge to evade the purposes" of the Act. The 1978 ADEA amendments, however, made any attempt at forcing retirement prior to age 70 illegal[4] and the 1986 ADEA amendments removed the age 70 limit for most employees.[5]

Records Play Key Role in Courts

It has become increasingly clear that the use of an employer's formal personnel evaluation records can play a critical role in the decision-making process of the federal courts in employment discrimination cases. Recent reviews of Title VII cases involving performance appraisal have found that appraisal systems are considered tests and as such must meet the federal guidelines on employee selection (Cascio & Bernadin, 1981; Kleiman & Durham, 1981). In addition, Ashe and McRae (1985) examined performance evaluation evidence in ADEA and Title VII cases and concluded that the most important factors determining employers' success in court are: (1) a formal, written performance evaluation system; and (2) objective evaluation procedures. This means that the value of evaluation records is not established by simply offering them into evidence. The courts have shown a firm desire for as many records as possible, along with an indication that the employer has gone about the evaluation process in a conscientious and fair manner. In addition, the employer, when seeking to justify its personnel action on the grounds of a "good cause" or "reasonable factors other than age" defense, is more likely to be successful when it produces regular evaluation records as evidence.

Formal records are not a requisite for rebutting the prima facie case. A rebuttal can also be accomplished through the testimony of fellow workers and superiors. However, where there are no formal records to substantiate such testimony, the attorney for the older worker may attack the credibility of the employer's witnesses, thus discounting the value of the only source of appraisal-related information. This holds particular significance for a jury trial, where the jury may be somewhat sympathetic to the employee.

Even when formal performance evaluations exist, they will be of little evidentiary value unless the older employee has been appraised in terms of definite identifiable criteria based on the quality and quantity of his/her work. A good example of how a court will react to a well-developed system of evaluation is found in Stringfellow v. Monsanto,* where the district court judge gave substantial weight to the employer's utilization of techniques and criteria for performance evaluation published by the American Management Association.

Performance Evidence Critical

The setting and circumstances in which an employee's job performance ascends to a key issue can be manifestly different in the three types of ADEA actions examined: promotions/demotions, layoffs/retirements; and discharges. For example, in an outright discharge situation, the fact that the employee has performed at a minimally acceptable level may insure to the benefit of the employee to a greater extent than in the layoff situation, where relative performance, not minimal, is at issue.

This chapter addresses fifty ADEA cases decided in the federal courts where the evaluation of the employee's performance has been a determinative factor. Tables Six through Eight list the type of performance evidence presented and the successful litigant for all fifty cases. This is followed by a discussion of the quantitative analysis of these cases.

Employer Evaluations Persuasive in Courtrooms

Promotion/Demotion

There were eleven ADEA actions in which the employee-plaintiff claimed his/her demotion or failure to be promoted was a result of age discrimination. In nine of these decisions the respective courts found the employer-defendant's arguments, disclaiming age bias, and pointing to legitimate nondiscriminatory reasons to explain the demotion or lack of promotion, to be the more persuasive. In particular, the courts placed great significance on the fact that the employer could reliably substantiate this by presenting formal and regular performance evaluations as evidence. In Zell v. United States, the employer used periodic, written evaluations similar to free form essays, and bolstered them with the inclusion of specific evaluation criteria.

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*Full citations for the cases referred to in this chapter may be found in the chapter's accompanying Tables.

The remaining two cases where the employer was the successful party were devoid of any type of regular or formal performance evaluation. The employer's defense in both cases relied on the testimony of management personnel. In Johnson v. Adams, the court relied on the contemporaneous written notations by supervisors relating to the employee's performance. While these notations could be seen as representing critical incidents, they were never incorporated into a formal evaluation process which is the usual manner in which critical incidents are utilized. In Braswell v. Kobelinki, the employer introduced a performance comparison of the plaintiff and the promoted employee. However, it was not until the trial that the comparison took form. Even here, the comparison was developed through oral testimony, as opposed to a formal periodic written evaluation.

There were two decisions involving promotion or demotion where the employee was victorious. In both cases, the court considered the testimony of the supervisor to be non-credible. In Krodel v. Department of Health and Human Services, the court noted that where employment procedures depend on subjective evaluations and favorable recommendations from an immediate supervisor there exists a "ready mechanism" for discrimination.

In Liebovitch v. Administrator, Veterans Administration, there was an annual formal evaluation of employees performance using graphic rating scales. However, the court reasoned that the supervisor's opinion of the employee's performance appeared to be derived more from a pre-existing expectation of the capabilities of a sixty year old person than from a fair evaluation of the plaintiff's actual skills.

In sum, it appears that the failure of employees to substantiate their allegations could be the result of misunderstanding the performance standards in promotion/demotion cases. The plaintiff's performance in his/her present job is not the principal criterion. What is critical is the employee's potential performance relative to other employees. In the cases cited above, the plaintiff addressed his/her proof of performance only to their ability to do their present job. However, when a plaintiff can establish his/her ability to adequately perform in the new assignment, the courts will expect the employer to defend its failure to promote the employee by demonstrating legitimate considerations based on a reasonable and credible

TABLE 6

Promotion and Demotion Cases

	Case Name/Citation	Type of Performance Evidence	Successful Party
1)	Zell v. United States, 472 F. Supp. 356 (E.D. Pa. 1979)	Yearly and tri-annual free form essays, based on specific evaluation criteria: credible testimony of supervisor.	Employer
2)	Braswell v. Kobelinski, 428 F. Supp. 324 (D.D.C. 1976)	Employee comparison developed through trial testimony, with use of a specific evaluation criteria.	Employer
3)	Johnson v. Adams, 20 FEP 1534 (D.D.C. 1979)	Written notations related to performance; credible testimony of supervisor.	Employer
4)	EEOC v. Trans World Airlines, Inc., 544 F. Supp. 1187 (S.D. NY 1982)	Graphic rating scales; credible testimony of management.	Employer
5)	Nicholson v. Western Electric Co., 555 F. Supp. 3 (M.D. NC 1982)	Employee comparisons; credible testimony of management.	Employer
6)	Weber v. Block, 784 F.2d 313 (8th Cir. 1986)	Graphic rating scales using three specific evaluation criteria; credible evidence of management.	
7)	Brooks v. City of Yuma, 30 FEP 1057 (D. AZ 1983)	Graphic rating scales with comments; credible testimony of management.	Employer
8)	Sales v. Dept. of Justice, 549 F. Supp. 1176 (D.D.C. 1982)	Rank-order comparisons using specific evaluation criteria.	Employer

(TABLE 6 Continued)

9) Pace v. Southern Railway System, 701 F.2d. 1383 (11th Cir. 1983)	Graphic rating scale using specific evaluation criteria.	Employer
10) Krodel v. Dept. of Health & Human Services, 33 FEP 689 (D.D.C. 1983)	Employee comparisons established a best qualified list; non-credible testimony of supervisor.	Employee
11) Liebovitch v. Administrator, Veterans Administration. 33 FEP 777 (D.D.C. 1982)	Graphic rating scales; non-credible testimony of supervisor.	Employee

performance evaluation process. In order to ensure the fair treatment of the older worker, the courts may come to dismiss as not credible an employer practice of ad hoc performance evaluation.

Layoff/Retirement

Although it is not always the case that layoff and retirement occur together in time, there are several examples of how the issues of age biased layoff and retirement coincide. The most common situation is where the employer due to a management decision or economic factors, must reduce its workforce. The employer will often "encourage" any employees who are eligible for retirement benefits to take early retirement.

As shown in Table 7, in seven of the nine decisions, the employer involved presented a successful defense. An employer's defense in a layoff case involves two phases. First, the employer must justify the need for any layoffs because such an action may be mere subterfuge to avoid the Act. Any reasonable economic factors such as lagging sales, growing inventory, or a depressed economy will satisfy the court. The reduction in the workforce may also be justified as a purely managerial decision.

The second phase of the employer's defense involves the employer's justification for choosing to layoff (or involuntarily retire) the plaintiff(s) rather than another employee. At this point, evidence concerning the employee's job performance and any criteria used in evaluating the performance will be introduced, in most cases by both parties.

Layoffs and involuntary retirement were responsible for two leading decisions involving performance evaluation under the ADEA. The decisions, Stringfellow v. Monsanto, and Mastie v. Great Lakes Steel Co., have set the standard by which all other performance appraisal systems are measured. In Stringfellow, the employer, needing to reduce the workforce due to a plant shutdown, conducted a rank-order comparison utilizing eighteen individual performance evaluation criteria. The employees were evaluated according to the criteria by their immediate supervisors, with each employee's appraisal form then reviewed by the plant superintendent. Each employee was permitted to review their appraisal form and attempts were made to work out any disputes. The Stringfellow court made it clear that the thorough and fair methods utilized by the employer in appraising the workforce was the determinative factor in granting judgment for the employer.

Mastie also involved a reduction in operation. The employer made use of a graphic rating scale. The scale consisted of five levels of performance (poor, limited, average, above average, or excellent), and eighteen performance evaluation criteria could be converted into numerical values. Examples of these criteria were knowledge, initiative, advancement potential and judgment. The court in Mastie was very impressed by the evaluation system. In holding for the employer, the court mentioned that absolute accuracy was not required. The court was satisfied with the genuine and honest effort the employer had made, and the apparent impartiality and conscientiousness of the appraisal process.

Even though Stringfellow and Mastie have set standards for acceptable evaluation systems, some successful employer defenses have not met such standards. Other courts have been satisfied with less formal appraisal methods. In Reed v. Shell Oil, a rank-order comparison technique was employed. The technique, however, used only three performance evaluation criteria, thus drawing into question the validity of the performance appraisal system. The court overcame this problem by attaching great importance to the continuity and consistency of the appraisal process, as it had been in place for over ten years.

TABLE 7

Layoff and Retirement Cases

Case Name/Citation	Type of Performance Evidence	Successful Party
1) Stringfellow v. Monsanto Co., 320 F. Supp. 1175 (W.D. Ark. 1970)	Rank-order comparison using specific performance criteria; credible testimony of management.	Employer
2) Mastie v. Great Lakes Steel Corp., 424 F. Supp. 1299 (E.D. Mich. 1976)	Graphic rating scale using specific evaluation criteria; credible testimony of management.	Employer
3) Reed v. Shell Oil Co., 14 EPD 7582 (S.D. Ohio 1977)	Rank-order comparison using specific evaluation criteria.	Employer
4) Ragget v. Foote Mineral Co., 16 FEP 1771 (M.D. Tenn. 1975)	Rank-order comparison using specific evaluation criteria; contemporaneous written notations on performance; credible testimony of supervisors.	Employer
5) Usery v. General Electric Co., 13 EPD 11, 430 (M.D. Tenn. 1976)	Contemporaneous written notations on performance; credible testimony of management.	Employer
6) Davis v. Adams-Cates Co., 19 FEP 1220 (N.D. Ga. 1976)	Credible testimony of management and fellow employees.	Employer
7) Bates v. Carborundum Co., & Standard Oil Co. of Ohio, 623 F. Supp. 613 (N.D. Ind. 1985)	Graphic rating scale with specific evaluation criteria; creble testimony of management.	Employer
8) EEOC v. Sandia Corp., 23 FEP 799 (10th Cir. 1980)	Rank-order comparison without use of specific evaluation criteria.	Employee

(TABLE 7 Continued)

9) Oshiver v. Court of Common Pleas, 469 F. Supp. 645 (E.D. Pa. 1979)	Informal evaluation consisting of one performance appraisal form; non-credible testimony of supervisors.	Employee

In Oshiver v. Common Pleas Court, the court held in favor of the employee because the employer could offer no extrinsic or objective evidence of inadequate performance by the employee. In this case, the employer's own performance appraisal evidence showed the plaintiff to be a satisfactory performer. Efforts by the employer to paint the employee as a poor performer through the oral testimony of supervisors were refuted by the plaintiff showing herself to be one of the highest scores on a promotion examination. This decision should serve as a message to employers that appraisal evidence which is hastily developed is unlikely to be treated as favorably as evaluation evidence which has been compiled through a period of contemporaneous performance appraisal.

In EEOC v. Sandia Corp., several employees were successful plaintiffs when the evaluation system was shown to be age-biased. The appraisal method used was a rank-order system based on the untenable and illegal assumption that performance necessarily declines with age. Moreover, the court recognized that while the evaluation performed were based on the best judgment and opinion of the evaluators, there was no definite identifiable performance criteria on which to support the evaluations. This case demonstrates that even a highly structured performance evaluation system may operate unfairly.

Discharge

When an employee protected under the Act has failed to receive a promotion or has been the victim of a layoff, that employee's job performance is to be compared with similarly situated employees. In the layoff situation, there are also independent management decisions or economic factors which bear significantly on the issue of age discrimination. In the situation where an employee has been "fired," however, the job performance of the discharged employee takes on a singular importance, for a failure to perform adequately will generally be the employer's only legitimate defense. Minimal ability, rather than relative ability, is the primary issue.

There were thirty ADEA cases involving discharge. In nine of these the employee was victorious clearly indicating how federal courts will view an employer's defense which lacks objective, consistent written appraisal evidence. In three of these cases, the court refused to rule in favor of the employer because it could only offer the testimony of one supervisor. This was particularly true when the supervisors' testimony was contradicted by opposing witnesses.

In two other decision in which the employee was victorious, each employer presented the testimony of management personnel. In both cases, the testimony was found to be non-credible. Each employer offered written evidence relating to performance, as well. In Buchholz v. Symons Mfg. Co., the employer offered two documents written by management personnel in which instances of poor performance were cited. However, one of the documents was written by a younger management employee who stood to gain personally by the plaintiff's discharge. The other document was written after the discharge. The court had no trouble finding such subjective documents worthless as performance evaluation evidence. In Schulz v. Hickok Mfg. Co., the employer failed to produce any testimony by the employee's closest supervisors. The employer could offer only one critical evaluation, but it had again been written after the discharge. Schulz is significant for its extensive reference to the Stringfellow evaluation procedures, and the comparison which was made to the "evaluation" methods of the employee in Schulz.

TABLE 8

Discharge Cases

Case Name/Citation	Type of Performance Evidence	Successful Party
1) Vaughn v. Burroughs Corp., 17 FEP 865 (E.D. Mich. 1978)	Free form essays without specific evaluation criteria; written notations on performance; credible testimony of management.	Employer
2) Magruder v. Selling Areas Marketing, Inc., 439 F. Supp. 1155 (N.D. Ill. 1977)	Contemporaneous written notations on performance; credible testimony of management and fellow employees.	Employer

(TABLE 8 Continued)

3)	*Marshall v. Westinghouse Elec. Corp.*, 576 F.2d 588 (5th Cir. 1978)	Contemporaneous notations on performance; credible testimony of management.	Employer
4)	*Havelick v. Julius Wiles Sons & Co., Inc.*, 445 F. Supp. 919 (S.D. NY 1978)	Contemporaneous notations on performance; credible testimony of management.	Employer
5)	*Cova v. Coca-Cola Bottling Co. of St. Louis*, 574 F.2d 958 (8th Cir. 1978)	Credible testimony of supervisor.	Employer
6)	*Erwin v. Bank of Mississippi*, 512 F. Supp. 545 (N.D. Miss. 1981)	Graphic rating scale using specific performance criteria; free form essays.	Employer
7)	*Reich v. N.Y. Hospital*, 513 F. Supp. 854 (S.D. NY 1981)	Graphic rating scale using specific performance criteria; contemporaneous notations of critical incidents.	Employer
8)	*Kephart v. Institute of Gas Technology* 630 F.2d 1217 (7th Cir. 1980)	Credible testimony of management.	Employer
9)	*Grant v. Gannett Co. Inc.*, 538 F. Supp. 686 (D. Del. 1982)	Free form essays; credible testimony of management; contemporaneous notations.	Employer
10)	*EEOC v. Franklin Square Union Free School District*, 25 EPD 31,601 (E.D. NY 1980)	Forced-choice checklist; free form essays.	Employer
11)	*Franklin v. Greenwood Mills Marketing Co.*, 33 FEP 1847 (S.D. NY 1983)	Graphic rating scales; official management memoranda; credible testimony of management.	Employer

(TABLE 8 Continued)

12)	*Fenton v. Pan American World Airways, Inc.*, 30 EPD 33,185 (D. NJ 1982)	Graphic rating scales broken down into five points; credible testimony of management.	Employer
13)	*Chamberlain v. Bissel, Inc.*, 547 F. Supp. 1067 (W.D. Mich. 1982)	Graphic rating scale with specific evaluation criteria and evaluator comments; credible testimony of management.	Employer
14)	*Stendebach v. CPC International, Inc.*, 691 F.2d 735 (5th Cir. 1982)	Graphic rating scale using specific evaluation criteria; credible testimony of management.	Employer
15)	*Everett v. Communications Satellite Corp.*, 33 FEP 793 (D.D.C. 1983)	Free form essays contemporaneous notations on performance; credible testimony of management.	Employer
16)	*Matson v. Cargill, Inc.*, 618 F. Supp. 278 (D. Minn. 1985)	Graphic rating scale using specific performance criteria in an eleven category matrix; credible testimony of management.	Employer
17)	*Murre v. A.B. Dick Co.*, 625 F. Supp 158 (N.D. Ill. 1985)	Free form essays with assigned ratings.	Employer
18)	*Graefenhain v. Pabst Brewing Co.*, 620 F. Supp. 696 (E.D. Wisc. 1985)	Graphic rating scales with evaluator comments; credible testimony of management.	Employer
19)	*Matthews v. Allis-Chalmers*, 769 F.2d 1215 (7th Cir. 1985)	Rank-order comparison using specific performance criteria; credible testimony of management.	Employer
20)	*Cebula v. General Electric Co.*, 614 F. Supp. 260 (N.D. Ill. 1985)	Graphic rating scales using specific performance criteria; contemporaneous notations on performance.	Employer

(TABLE 8 Continued)

21)	Sherrod v. Sears, Roebuck & Co., 785 F.2d 1312 (5th. Cir. 1986)	Graphic rating scales using specific evaluation criteria with evaluator comments.	Employer
22)	Bucholz v. Symons Mfg. Co., 445 F. Supp. 706 (E.D. Wis. 1978)	Non-contemporaneous written notations on performance; non-credible testimony of management.	Employee
23)	Hodgson v. Sugar Cane Growers Coop. of Fla., 5 EPD 8618 (S.D. Fla. 1973)	Non-credible testimony of supervisor.	Employee
24)	Schulz v. Hickok Mfg. Co., 358 F. Supp 1208 (N.D. Ga. 1973)	One performance appraisal form (favorable to employee); non-contemporaneous written notation on performance; non-credible testimony of management.	Employee
25)	Marshall v. Goodyear Tire & Rubber Co., 554 F.2d 730 (5th Cir. 1977)	Non-credible testimony of supervisor.	Employee
26)	Scofield v. Bolts & Bolts Retail Stores Inc., 21 FEP 1478 (S.D. NY 1979)	Non-credible testimony of supervisor.	Employee
27)	Graham v. F.B. Leopold Co., Inc., 779 F.2d 170 (3rd Cir. 1985)	Graphic rating scales; non-credible testimony of management.	Employee
28)	Davis v. Ingersoll Johnson Steel Co., Inc., 628 F. Supp. 25 (S.D. Ind. 1985)	Graphic rating scales; non-credible testimony of management.	Employee
29)	Nordquist v. Uddeholm Corp., 615 F. Supp. 1191 (D. Conn. 1985)	Free form essays; non-credible testimony of management.	Employee

(TABLE 8 Continued)

30)	Dreyer v. ARCO Chemical Co., 801 F.2d 651 (3rd Cir. 1986)	Checklists; employee comparisons; non-credible testimony of management.	Employee

The above discussion on discharge should not suggest that oral testimony cannot be used successfully by an employer to defend an ADEA claim. In Cova v. Coca Cola Bottling Co. of St. Louis, a federal court of appeals placed significant emphasis on the trial court's finding of great credibility in the employer's sole witness, the management supervisor responsible for the four discharges at issue. The discharges were the result of a shake-up following Coca-Cola's purchase of an existing bottling plant. The Cova decision is important in that the court of appeals expressly rejected the employee's claim that because the employer had not used formal, contemporary evaluation procedures, the ADEA suit could not be successfully defended as a matter of law. The court found such procedures as used in Mastie and Stringfellow, commendable, but not required by the Act. The court did note, however, that the lack of such procedures could cast doubt on any subsequent explanation of a discharge.

The proposition that the credibility of defense witnesses can overcome the absence of formal evaluation procedures is reinforced in the remainder of the discharge decisions. However, none relied solely upon testimony. Each case included the presentation of at least some form of written evidence made in one instance, Vaughn v. Burroughs Corp., the employer offered unstructured, annual free form essay evaluations. It should be noted that the testimony in all these cases was fairly detailed, and often came from witnesses in higher level management positions.

Moreover, in cases in which the employer was successful, the fact that the Act was not intended to affect employer decisions based on individual appraisal of a person's abilities or potential, but only to attack arbitrary and discriminatory personnel practices was often cited. This reference to the Act's intent was generally used by both employers and the courts to justify the acceptance of oral testimony. While such an assessment of the intent of the Act cannot be disputed, it does not dispose of the need for a defendant to produce credible and substantial evidence that legitimate factors other than age were used in making a discharge decision.

Quantitative Analysis

The results are presented through the use of frequency distributions as shown in Tables Nine through Eleven. Table 9 presents the frequencies and percentages of selected personal case characteristics. The majority of cases were brought by males (80 percent), between the ages of 50-59 (58.3 percent), whose occupation could be classified as professional or managerial (70 percent).

It appears that an incorporated organization is the defendant in the majority of ADEA cases where performance appraisal is a determinative factor (76.1 percent). Since most ADEA cases are brought by male professional/managerial employees, it may be expected that they be found working for generally larger, more developed organizations, as opposed to family or individually-owned businesses. Among industries, the public sector agencies (20 percent) and manufacturing concerns (46 percent) attracted the majority of ADEA litigation. The former percentage may be viewed as somewhat surprising in light of government's responsibility to adhere to laws it is charged with enforcing.

The frequencies of selected procedural and determination case characteristics are presented in Table 10. It should be first noted that the majority of cases originated outside the Northeast (74 percent). This may be attributed to the fact that 19 of the 20 right-to-work states can be found in the South and West regions (Bureau of Labor Statistics, 1980). The employment environment created by such laws may encourage employers to be more aggressive in discharging or forcing the retirement of older workers. Another contributing factor may be the absence of ADEA deferral states among the South and West regions.[6] A deferral (or referral) state is recognized by the EEOC as having a law prohibiting age discrimination, with a state authority empowered to grant relief. In the South, for example, only three states are presently designated as referral states.[7]

TABLE 9

Frequencies and Percentages of Selected Personal Case Characteristics

	Frequency*	Percentage
A. Sex		
Male	40	80.0
Female	10	20.0
B. Age		
40-49	13	27.1
50-59	28	58.3
60-70	7	14.6
C. Occupation		
Professional/Managerial	35	70.0
Blue Collar	8	16.0
Clerical	5	10.0
Retail	2	4.0
D. Employer's Financial Structure		
Corporation	30	65.2
Corporate Subsidiary	5	10.9
Government	9	19.6
Not-for-profit	2	4.3
E. Industry		
Public Sector	10	20.0
Manufacturing	23	46.0
Utilities/Transportation	4	8.0
Service	4	8.0
Food/Agriculture	2	4.0
Retail/Wholesale	5	10.0
Other	2	4.0

* Differences among the sample sizes for each variable are due to missing data in the cases.

Most ADEA litigation ends at the district court level (76%). One interesting finding was the increase in ADEA cases in recent years. The first 11 years of the legislation (1968-1978) account for only 32 percent of the substantive cases, with the remaining cases (68 percent) resolved in the period 1979-1986. In the early years of the ADEA, the federal courts were required to establish many procedural rules. The increase in substantive cases in recent years suggests that the procedural rules for ADEA cases are in fact being largely settled.

Also, it is important to note that the 1979-1986 period represents the years following the 1978 Amendments to the ADEA in which Congress attempted to clarify several procedural issues. Examples include the granting of the right to a jury trial, redefining the notice of intent to sue requirements, and prohibiting mandatory retirement before age 70.[8] Such changes were intended to strengthen a plaintiff's substantive claim. At the same time, the amendments served to publicize the rights of older workers, thus contributing to the increase in ADEA litigation. Additionally, the transfer of enforcement responsibility for the ADEA to the EEOC in July, 1979, provided the Act with a higher profile and an enforcement agency experienced in employment discrimination claims.

Table 10 also reports that on a national basis, employers have been victorious in these actions 74.0 percent of the time. The employer success rate may support Galanter's proposition that frequent litigators have advantages over less frequent

TABLE 10

Frequencies and Percentages of Selected Procedural and Determination Case Characteristics (N=50)

	Frequency*	Percentage
A. Geography		
Northeast	13	26.0
Outside Northeast	37	74.0
B. Court of Last Resolution		
District Court	38	76.0
Court of Appeals	12	24.0
C. Date of Decision		
1968-1978	16	32.0
1979-1980	7	14.0
1981-1982	10	20.0
1983-1984	6	12.0
1985-1986	11	22.0
D. Outcome		
Employer Wins	37	74.0
Employee Wins	13	26.0

litigators (Galanter, 1979). Thus, employing Galanter's taxonomy, the employee-complainant may be considered a "one-shotter," and the employer-defendant a "repeat-player." Because of their position and greater expertise, repeat-players are expected to "settle" weaker cases and litigate strong cases. It may be that employees have more favorable prelitigation success rate.

The frequencies of selected performance appraisal system case characteristics are shown in Table 11. In those cases where the information was available, most organizations tended to use the performance appraisal system for the purposes of either promotion (20 percent) or layoff/transfer (20 percent). Not surprisingly, graphic rating scales was the evaluation method used the most (44 percent) followed by informal supervisors evaluation (18 percent). In addition, organizations tended to evaluate their employees performance annually (46 percent) using primarily one evaluator (73 percent) and provided feedback to the employees on their performance (80.8 percent).

TABLE 11

Frequencies and Percentages of Selected Performance Appraisal System Case Characteristics

	Frequency*	Percentage
A. Purpose of Appaisal System		
Promotion	10	20.0
Salary Increase	4	8.0
Employee Growth/Development	4	8.0
Layoff/Transfer	10	20.0
Other	22	44.0
B. Evaluation Method		
Graphic Rating Scales	22	44.0
Employee Comparisons	6	12.0
Checklists	1	2.0
Free Form Essays	8	16.0
Informal Suypervisors Evaluation	9	18.0
Other	4	8.0

(TABLE 11 Continued)

C. Frequency of Appraisal		
Three to Nine Months	5	11.1
Once a Year	21	46.7
More Than Once a year	10	22.2
No Formal Appraisal Conducted	9	20.0
D. Number of Evaluators		
One	27	73.0
Two or Three	6	16.2
Four to Six	4	10.8
E. Results Reviewed with Employees		
Yes	21	80.8
No	5	19.2

*Differences among the sample sizes for each variable are due to missing data in the cases.

We were unable to apply statistical techniques, such as discriminant analysis, due to missing information in the cases.

Conclusions

The type of personnel action appears to dictate the nature of the proof required to substantiate a nondiscriminatory employer decision. Promotion decisions require that the employer only show that the complaining employee was not as qualified as the candidate selected for an expanded role in the organization. Along the same lines, layoffs and retirements require the employee to demonstrate that the laid-off/retired employee was not as qualified as those selected to remain. In contrast, a discharge decision will not be upheld where the employee has performed at a minimally acceptable level. Therefore, discharge actions will probably require an expanded justification by the employer in order to establish that the decision was made on a nondiscriminatory basis.

Formal performance evaluation procedures have not been required for an employer-defendant to mount a successful defense. The courts have permitted less reliable sources of employee performance information to be used as conclusive evidence substantiating an employer claim of nondiscriminatory decision-making. However, an employer that conducts periodic well-designed performance evaluations and makes personnel decisions based upon the performance appraisal is likely to successfully rebut a claim of discriminatory conduct. Among the 50 cases studied, those employers that conducted formal performance appraisals were successful in 78 percent of such cases. Therefore, it is evident that the use of fair and consistent performance appraisal methods supports the intent of the ADEA to place older workers on an equal footing with their younger counterparts.

NOTES

1. 29 U.S.C. Section 621 et seq. as amended (1986).

2. Senate Report No. 95-493, 95th Cong. 2nd Sess., reprinted in (1978) U.S. Code Cong. and Admin. News 976. 631(a)).

3. Lindsey v. Southwestern Bell Telephone Co., 546 F. 2d 1123, 1124 (5th Cir. 1977).

4. 29 U.S.C. 623(f)(2), as amended by Age Discrimination in Employment Act Amendments of 1978 Pub. L. No. 95-256 29 Stat. 189 (1978); see, 29 CFR 860.120; see, e.g., Thompson v. Chrysler Corp. 569 F. 2f 989 (6th Cir. 1978).

5. HR 4154, 99th Cong. 132 Cong. Rec. 16,850-57 (1986).

6. See 29 U.S.C. Sec. 633 (b).

7. See 29 C.F.R. Sec. 1626.10 (1981).

8. Age Discrimination in Employment Act Amendments of 1978, Pub. L. No. 95-256 92 Stat. 189 (1978).

CHAPTER FIVE

THE FILING AND OUTCOME OF AGE DISCRIMINATION COMPLAINTS: THE EEOC EXPERIENCE

Since 1979, the EEOC has been the administrative agency for the ADEA. This study is the first to statistically analyze age discrimination complaints filed at the federal level.

This chapter presents an empirical analysis of factors associated with the filing and outcome of age discrimination complaints brought under the ADEA. The analysis will focus on personal and workplace characteristics associated with the filing of age discrimination complaints. The results are presented through the use of frequency distributions, cross-tabulations and chi-square tests. Significant relationships were found among several variables.

Hypothesis

As a result of the novelty of the study, little research exists on identifying factors which may predict whether an individual worker will experience success when filing an ADEA complaint. Schuster and Miller (1986) concluded from an analysis of ADEA claims resolved in federal courts, that the sex of the complainant influences case outcome. Specifically, the research found women to be more successful as litigants in ADEA cases. The authors suggested that the added protection afforded women under Title VII, even when not asserted, may be influencing in a positive manner the treatment of women as ADEA complainants.

While age discrimination legislation seeks to protect older workers, the protective bracket of the ADEA during the time period studied spanned 30 years. Thus, a 40 year old complainant may not necessarily be viewed in a manner equivalent to that of a 60 year old complainant. It is clear that the impact of negative personnel actions increases as a worker ages (Boglietti, 1974; Rosenblum, 1975). Assuming that this progression is not lost on decision-makers in the age discrimination complaint process, complainants in the upper bounds of the age bracket can be expected to experience more success in case outcomes.

It can also be expected that an employer who suffers an adverse personnel decision through a highly structured personnel system, such as civil service, will be less able to attack the decision as arbitrary. Thus, public sector employees should receive fewer probable cause findings than various private sector employees.

It is further suggested that the year the complaint was closed has an impact on case outcome. The research of federal ADEA court cases by Brandon and Synder (1985) showed on increase in the proportion of cases won by employers over time. They postulate that this may be an indication that employers are adapting the 1981 EEOC age discrimination in employment guidelines.[1] A similar shift in court decisions was noted when the EEOC published the Uniform Guidelines on Employee Selection

Procedures[2] and the sex discrimination regulations.[3] Therefore, it is hypothesized that the more recent the decision date, the less likely complainants will experience success.

As in the case in all employment discrimination litigation, there is a deference to an employer's right to hire, fire, promote or otherwise manage employees as it so wishes. This regard for management prerogatives has been found to be especially strong where the personal action is of great significance, such as discharge or early retirement (Schuster & Miller, 1986). At the same time, the decision maker in the complaint process will find it more comfortable to force an employer's hand in matters such as promotions, transfers and compensation. As a result, it is asserted here the more severe the personnel action, the less likely complainants will experience success.

Methodology

The data source for this study were two computer tapes of ADEA complaints filed with the EEOC from July 1, 1979 to May 16, 1986. One tape contained 104,024 charges filed under ADEA only ('pure'). The second tape contained 25,968 charges filed under ADEA and Equal Pay Act (EPA) or Title VII ('combined'). Both data sets included 43 variables. The set provided information on personal characteristics of the complainants, characteristics of the respondent, the personnel action(s) prompting the complaint and procedural aspects of the complaint. The data sets were scanned to delete charges that were still active. This resulted in a 'pure' ADEA data set of 84,367 observations and a 'combined' data set of 19,005 observations.

The data sets provided information on the following variables: age and sex of the complainant, type of respondent, basis of the complaint, year the complaint was closed, disputed personnel action(s) and complaint outcome. In order to permit a useful and manageable statistical analysis, categories for several variables were collapsed or deleted.

The type of respondent variable was constructed by combining public and private colleges and universities into one category and combining public and private elementary and secondary schools into one category.

A complainant can file a charge with the EEOC alleging discrimination on one to a maximum of six basis. These basis are: race, sex, age, equal pay, religion, national origin and retaliation. In the combined data set, the basis of the complaint variable was constructed with the following categories: age and sex; age and race; age, sex and race; age and national origin; age and retaliation; and age and other basis combinations.

An ADEA charge can be filed with the EEOC alleging one to a maximum of eight discriminatory personnel actions. Complaints that involved discharge or involuntary retirement only and complaints that involved termination and any other personnel action were combined in the 'termination' category. Complaints that involved two or more non-termination actions were combined in the 'multiple non-termination' category. The remaining categories were single issue, non-termination actions as follows: hiring, compensation/benefits, promotion/transfer/demotion and other terms and conditions of employment.

EEOC staff provided documentation and personal assistance in constructing the complaint outcome variable. Cases that were voluntarily withdrawn by the complainant without a settlement, or dismissed because of either lack of jurisdiction or administrative closing were omitted from this variable.

Results and Analysis

Frequencies

The frequencies and percentages of complaint characteristics of the ADEA only ('pure') data set are shown in Table 12. The frequencies and percentages of ADEA complaint characteristics of the combined ADEA and Title VII or EPA ('combined') data set are shown in Table 13.

Those complainants filing 'pure' ADEA charges were predominantly male (67.6 percent) where as the majority of complainants filing 'combined' ADEA charges were female (54.5 percent). It may be that age discrimination legislation provides the only recourse for older males who believe they have unfairly suffered an adverse personnel action (Schuster & Miller, 1986).

Table 12

Frequencies and Percentages of Complaint Characteristics

(ADEA only)

		Frequency	Percentage
A.	Sex (N=81348)		
	Male	54955	67.6
	Female	26393	32.4
B.	Age Group (N=49423)		
	40-49	14541	29.4
	50-59	23567	47.7
	60-70	11315	22.9
C.	Type of Respondent (N=83344)		
	Private Employer	70017	84.0
	Government-State and Local	7623	9.1
	Union	2902	3.5
	Elementary/Secondary Schools	1510	1.8
	Colleges/Universities	1292	1.6
D.	Personnel Action (N=83854)		
	Termination	53361	63.6
	Multiple Non-termination	3949	4.7
	Hiring	10742	12.8
	Compensation/Benefits	2999	3.6
	Promotion/Transfer/Demotion	3413	4.1
	Other Terms and Conditions	9390	11.2
E.	Year Complaint Closed (N=84365)		
	1979	971	1.2
	1980	3140	3.7
	1981	9695	11.5
	1982	12412	14.7
	1983	20069	23.8
	1984	17589	20.8
	1985	16166	19.2
	1986	4323	5.1

(Table 12 Continued)

E. Outcome (N=37877)

No Probable Cause	27570	72.8
Probable Cause	712	1.9
Settlement	9595	25.3

Among all complainants, the majority were between the age of 50-59. Thus it would appear that the ADEA is receiving the most attention by those employees likely to be in greatest need of protection. That is, those older workers who: (1) have reached the end of their career path with a particular organization, (2) are priced higher than young workers, (3) would find it difficult to start over, and (4) are not yet close enough to the security of retirement benefits. This is particularly important in light of research concluding that workers in the 55 and over age group have the highest rate of discouraged workers of any age group, and the general finding that the risk of long-term unemployment increases significantly for non-working males reaching the age of 50 (Boglietti, 1974; Rosenblum, 1975).

The defendant in the majority of claims was a private employer with state and local government agencies attracting approximately 10 percent of complaints. This latter figure may be viewed as somewhat surprising in light of government's responsibility to adhere to laws it is charged with enforcing.

Among the 'combined' ADEA charges, the majority (97.1 percent) were brought under ADEA and Title VII with 2.4 percent brought under ADEA, Title VII and EPA and the remainder (.4 percent) brought under ADEA and EPA. The majority of complaints alleged discrimination based on age and sex (33.7 percent) and age and race (27.0 percent). Interestingly, 8.5 percent of age complainants alleged retaliation by their employer. The manner and incidence of organization retaliation against age discrimination complaints is discussed in detail in Chapter Fourteen.

Previous research concerning federal court actions under the ADEA showed that the majority of claims were prompted by the personnel actions of discharge or involuntary retirement (Schuster & Miller, 1986). From Tables 11 and 12, it can be seen the EEOC analysis produced similar results, where discharge or involuntary retirement was the challenged personnel action in 63.6 percent and 57.2 percent, respectively, of the cases. Older workers may tolerate less severe forms of age-based employment discrimination, and publicly address their grievances only when separation occurs.

Recent years have seen a significant increase in the number of ADEA complaints filed with the EEOC. Similarly, the majority of complaints in the data sets were closed from 1983-1985.

Tables 11 and 12 also report on the outcome of ADEA complaints. For both data sets, a finding of no probable cause occurred in the majority of complaints. This employer success

Table 13

Frequencies and Percentages of Complaint Characteristics

(Combined ADEA, Title VII and EPA)

	Frequency	Percentage
A. Sex (N=18894)		
Male	8593	45.5
Female	10301	54.5
B. Age Group (N=11708)		
40-49	4867	41.6
50-59	5173	44.2
60-70	1668	14.2
C. Type of Respondent (N=18801)		
Private Employer	15092	80.3
Government-State and Local	2285	12.2
Colleges/Universities	588	3.1
Elementary/Secondary Schools	519	2.8
Union	317	1.7
D. Basis of Complaint (N = 19005)		
Age and Sex	6397	33.7
Age and Race	5139	27.0
Age, Sex and Race	927	4.9
Age and National Origin	2221	11.7
Age and Retaliation	1621	8.5
Age and Other Combinations	2700	14.2
E. Personnel Action (N=18813)		
Termination	10760	57.2
Multiple Non-termination	1790	9.5
Hiring	2132	11.3
Compensation/Benefits	274	1.5
Promotion/Transfer/Demotion	1298	6.9
Other Terms and Conditions	2559	13.6

(Table 13 Continued)

F. Year Complaint Closed (N=19004)		
1979	10	.1
1980	85	.4
1981	1419	7.5
1982	2871	15.1
1983	4151	21.8
1984	4099	21.6
1985	5056	26.6
1986	1313	6.9
G. Outcome (N=8723)		
No Probable Cause	6087	69.8
Probable Cause	117	1.3
Settlement	2519	28.9

rate may support Galanter's proposition that frequent litigators have advantages over less frequent litigators (Galanter, 1979). Thus, employing Galanter's taxonomy, the employee-complainant may be considered a "one-shotter," and the employer-defendant a "repeat-player." Because of their position and greater expertise, repeat-players are expected to "settle" weaker cases and litigate stronger cases. It might be expected that employees have a more favorable prelitigation success rate.

In fact, this last proposition draws some support from the number of complaints withdrawn with a settlement. Settlement can reasonably be interpreted as containing some measure of success for the complainant. Yet, even when combined with the proportion of probable cause findings, it is apparent that employers have consistently mounted successful defenses.

Cross-Tabulations and Chi-Squares

Through the use of cross-tabulations and associated chi-squares, significant relationships were found between many variables. Tables 13 and 14 provide a summary of the relationships between the independent variables, and their impact on complaint outcome. It must be noted that the significance of many of these relationships may be a function of the large sample size. As a result, this cross-tabulation analysis serves primarily a descriptive function.

Sex of the complainant. It was hypothesized that females would experience greater success than males when filing age discrimination complaints. The results from both the 'pure' and 'combined' data sets support this hypothesis. Females suffered fewer 'no probable cause' findings than their proportion of the total number of claims.

For both sexes, the majority of cases in both data sets involved a termination action. This is contrary to the analysis of the federal court cases which showed that most of the cases brought by females involved a job status issue.

In the 'pure' data set, across both sexes, the majority of complainants were in the 50-59 age group. In contrast, in the 'combined' data set, across females, 44.1 percent were ages 40-49 and 43.6 percent were in the 50-59 age group. Across males, 38.4 percent were in the 40-49 age bracket and 45.0 percent, were in the 50-59 age group. Thus, it appears that in the 'combined' data set females were younger than male complainants.

Table 14

Selected Cross-Tabulations of Complaint Characteristics and Outcome (ADEA only)

Variables	N	Chi-Square	Probability
Outcome X Sex	35464	409.418	<0.001*
Outcome X Age Group	23328	233.609	<0.001*
Outcome X Type of Respondent	37265	1119.021	<0.001*
Outcome X Year Complaint Closed	37877	3001.597	<0.001*
Outcome X Personnel Action	37686	403.837	<0.001*
Sex X Age Group	49233	50.937	<0.001*
Sex X Type of Respondent	80625	421.739	<0.001*
Sex X Personnel Action	80906	145.656	<0.001*
Age Group X Type of Respondent	49251	503.631	<0.001*
Age Group X Personnel Action	49343	643.459	<0.001*
Type of Respondent X Personnel Action	83111	12954.557	<0.001*

*p $\leq$ .001

Additionally, in the 'combined' data set, there was a significant relationship between sex of the complainant and the basis of the complaint. Across females, the majority (48.1 percent) of complaints alleged age and sex discrimination. In contrast, across males, the predominant basis of the complaint was age and race discrimination (36.6 percent).

Age of the complainant. It was expected that older members of the protected age bracket would fare better than younger members. There appears to be support for this hypothesis. In both data sets, the 60-70 age group suffered the lowest percentage of no probable cause findings and received the highest percentages of probable cause findings and settlements of the

Table 15

Selected Cross-Tabulations of Complaint Characteristics and Outcome (Combined ADEA and Title VII or EPA)

Variables	N	Chi-Square	Probability
Outcome X Sex	8690	43.197	<0.001*
Outcome X Age Group	5476	6.497	0.165
Outcome X Type of Respondent	8680	113.977	<0.001*
Outcome X Basis of Complaint	8723	55.794	<0.001*
Outcome X Year Complaint Closed	8723	493.562	<0.001*
Outcome X Personnel Action	8681	138.158	<0.001*
Sex X Age Group	11683	60.317	<0.001*
Sex X Type of Respondent	18707	61.786	<0.001*
Sex X Basis of Complaint	18894	2615.073	<0.001*
Sex X Personnel Action	18730	405.256	<0.001*
Age Group X Type of Respondent	11658	50.873	<0.001*
Age Group X Basis of Complaint	11708	75.736	<0.001*
Age Group X Personnel Action	11660	76.776	<0.001*
Type of Respondent X Basis of Complaint	18801	257.393	<0.001*
Type of Respondent X Personnel Action	18684	2203.200	<0.001*
Basis of Complaint X Personnel Action	18813	507.641	<0.001*

$^*p \leq .001$

three age categories. These results suggest that those in the 60-70 age group do experience more success than their younger counterparts.

Type of respondent. It was asserted that public sector employees should receive fewer probable cause findings than private employers. However, the results indicate otherwise with complaints against state and local government agencies receiving the highest percentage of probable cause findings of any type of respondent category.

Year complaint closed. It was hypothesized that the more recent the decision date, the less likely complainants would experience success. The results appear to support this hypothesis. In both data sets, from 1981 to 1986, within year, the percentage of 'no probable cause' findings steadily increases. This may be an indication that employers are adapting the 1981 EEOC age discrimination in employment guidelines (Brandon & Synder, 1985).

Personnel action. It was asserted that the more severe the personnel action, the less likely complainants will experience success. The results indicate otherwise. In both data sets, complaints involving a termination issue did not receive more 'no probable cause' findings than other personnel action categories. In the 'pure' data set, complaints involving compensation/benefits issues, suffered the highest percentage of 'no probable cause' findings (84.6 percent) and those complaints involving a hiring issue received the lowest percentage of no probable cause findings (63.6 percent). In contrast, in the 'combined' data set, those complaints involving a hiring issue received the highest percentage of 'no probable cause' findings (78.8 percent) and those complaints involving other terms and conditions of employment received the lowest percentage of 'no probable cause' findings (62.0 percent). Interestingly, in the 'combined' data set, complaints alleging discriminatory compensation/benefits actions did not receive any probable cause findings.

Basis of the complaint. In the 'combined' data set, those individuals who brought complaints charging age and sex discrimination appeared to experience more success than other basis categories. Within categories, those complaints based on age and sex received the fewest 'no probable cause' findings (66.6 percent) and the most settlements (31.9 percent).

Conclusions

The results reported indicate the ADEA has become the primary device for males in redressing arbitrary personnel decisions. This finding is consistent with the experience of the ADEA in federal court, and serves to create a potential conflict between the employment rights of older workers and those of workers protected under Title VII-type legislation. Indeed, the majority of complainants filing combined ADEA and Title VII charges were female.

Women experienced greater success than men in filing age discrimination complaints. In this instance, the goals of the ADEA may indeed be furthered by females particular place within Title VII legislation.

For both sexes, the majority of cases involved a termination action. This is contrary to the analysis of federal court cases which showed that most of the cases brought by females involved a job status issue.

The majority of claims were filed by those in the 50-59 age group. However, the complainants experiencing the most success in their claims were in the 60-70 year bracket. Therefore, it appears that those most in need of protection, age 50-59, were in fact, failing in their claims most often.

The more recent the decision date of the complaint, the less success experienced by complainants. This may be an indication that employers are adapting the 1981 EEOC age discrimination in employment guidelines.

While the study identified the degree to which complainants settle claims, there was no data available to determine whether the complainants significantly benefitted from the settlement agreements reached. This is a qualitative issue demanding further research.

NOTES

1. 29 C.F.R. Part 1625, 46 Federal Register 47724-47728 (1981).
2. 29 C.F.R. Part 1607 (1978).
3. 29 C.F.R. Part 1604, as amended (1980).

CHAPTER SIX

THE FILING AND OUTCOME OF STATE AGE DISCRIMINATION COMPLAINTS: THE NEW YORK EXPERIENCE

Introduction

The federal Age Discrimination in Employment Act (ADEA) was designed to protect older workers from arbitrary, capricious, and invidious employment discrimination, including the refusal to hire, promote, and provide fair compensation.[1] Most importantly, the ADEA prevents employers from laying off, discharging, or involuntarily retiring employees on the basis of age. Since its enactment in 1967, the ADEA has developed into the primary vehicle for protecting the job security of older workers, and preserving and maintaining their economic security.

Recent years have seen a significant increase in the number of ADEA complaints filed with the Equal Employment Opportunity Commission (EEOC).[2] Slow economic growth, workforce reductions, and greater public awareness of the ADEA has established the Act's role as the major device for protecting the employment rights of older workers.

However, the ADEA was not designed to shoulder the entire burden of age discrimination in employment complaints. Where there exists a suitably effective state statute prohibiting employment discrimination based on age, the federal Act provides for the deferral of age discrimination complaints to the appropriate enforcement agency in each state.[3] Indeed, the U.S.

Supreme Court has interpreted the ADEA as making mandatory the commencement of state proceedings in deferral states,[4] prior to any enforcement action under the federal law. Thus, a prospective ADEA litigant must first file with the appropriate state agency when seeking a resolution of his or her claim.[5]

This chapter presents an empirical analysis of those factors associated with the filing and outcome of age discrimination complaints brought under the State of New York's Human Rights Law.[6] The study assessed approximately 6,000 complaints, and factors examined included complainant's age, sex, race, level of education, occupation and union membership, as well as the disputed personnel action. In particular, the chapter will measure how these factors are associated with the likelihood of success for those workers filing age discrimination complaints with the state agency. The implications of the findings will be discussed.

The Enforcement of Age Discrimination Legislation

The importance of the ADEA will continue to grow as the proportion of persons, age 40-70, increases.[7] At the same time, the ability of older workers to realize the rights and benefits guaranteed them under the ADEA will be continually challenged by demographic and structural changes. Such changes include a shifting economic base, the maturation of the "baby-boom" generation and the lengthening of an individual's economically productive life (Lind, 1985). While there will surely be broad societal benefits to this development, a primary effect more immediate to our purposes will be to limit the availability of job opportunities and career paths for older workers.[8] As a result, full enforcement of the ADEA becomes central to the maximization of these opportunities.

Employers and the EEOC

Employers faced with the requirements of the ADEA will be increasingly hard pressed to provide longer tenured employees with sufficient opportunities for career advancement and growth.[9] Indeed, it may be expected that the proper enforcement of the objectives of the ADEA will demand that employers engage in creative training programs, thereby permitting older workers to fulfill their productive potential (Faley, Keliman & Lengnick-Hall, 1984).

An additional challenge to employers is their companion responsibility of complying with the demands of Title VII of the Civil Rights Act of 1964.[10] In particular, the increasing entrance of educated minorities and females into the workforce can be expected to impact on the employment status of the older white male. Previous research has shown the guarantees of the ADEA to be primarily utilized by this latter group (Blumrosen, 1982; Northrup, 1977; Schuster & Miller, 1984a). Thus, employers making personnel decisions have the "Hobson's Choice" of electing among employees equally endowed with federally protected employment rights, and each with the capacity and willingness to exercise those rights (Blumrosen, 1982). This conflict is confounded where employers must make personnel choices among not only minorities or women and older white males, but minorities and women also within the protected age bracket of the ADEA.

However, these dilemmas confront not just employers, for they must also be of central concern to the EEOC. The EEOC, in its responsibility for enforcement of both Title VII and the ADEA, will seek to fulfill its mission under both statutes, only to encounter constituencies competing for limited employment opportunities (McKenry, 1981). A plausible outcome of this competition would be a policy of accommodation. The effect of any accommodation, though, could be viewed as a departure from the original purposes of both Title VII and the ADEA, with the unintended effect of diluting the policies of two major pieces of socio-economic legislation.

The Role of State "706" Agencies

At present, the ADEA and the EEOC represent the primary mechanism for protecting the employment rights and opportunities of older workers. However, as noted earlier, Congress has intended, and the Supreme Court has required that states with legislation similar to the ADEA in place, and enforcement agencies equivalent to the EEOC, become first-stage repositories for age discrimination complaints.

The effect is to significantly enhance the role of state law in promoting the equal treatment of older persons in employment matters. As the costs and delays of courtroom litigation continue to mount, it can be expected that the resolution mechanism offered by state agencies will become increasingly attractive. Presently, 35 states maintain adequate legislation and a state-wide enforcement agency qualified as a certified and designated "706" deferral agency, under the provisions of Section 706 of Title VII and accompanying regulations.[11]

The deferral of ADEA complaints to state agencies necessarily implies that the relevant state statute and enforcement process will effectively and fairly address the grievances of older workers. However, if one accepts the notion that the enforcement of equal employment rights takes place in varying working and legal environments across the country (Hoyman, 1980), then it must be also realized that age discrimination complainants may be subject to uneven adjudication of their claims. This prospect of older workers not receiving their statutory rights in a uniform manner across the 50 states, has obvious implications in terms of public policy. The more uneven the application and effect of a national employment policy, as embodied in the ADEA, the more such policy approaches the status of state-by-state legislation. The result is the loss of a minimally assured level of compliance and enforcement.

Thus, the evaluation of the effectiveness of state agencies in fulfilling the objective of the ADEA takes on particular importance. While the operation and impact of ADEA in the federal courts has been scrutinized since its enactment, the impact of the treatment of age discrimination complaints at the state level has yet to be assessed. This chapter represents the first effort in filling this void.

The State of New York Human Rights Law

The age discrimination in employment statute to be studied is a provision of the New York State Human Rights Law (HRL).[12] The statute is functionally similar to the ADEA, although the protected age bracket ranges from 18 to 65 years of age.[13] The HRL is administered and enforced by the state's Division of Human Rights (DHR).[14] The DHR is a certified 706 deferral agency, and therefore is initially responsible for the resolution of age discrimination claims.[15]

Complaints filed with the DHR can be subject to several stages of processing.[16] A complaint will first be investigated by the agency's staff. At that level, the DHR will determine if jurisdiction exists, and if so, an attempt will be made at settlement. If no settlement is forthcoming, the agency will issue a determination of whether there is probable cause (PC) or no probable cause (NPC) to believe unlawful discrimination occurred. At this point, if a PC determination is made, the complaint proceeds to the conciliation stage, where attempts are again made to reach a settlement. If conciliation is unsuccessful, the complaint is then presented at a public hearing before a hearing examiner, who determines whether a violation has occurred. Such decision may be appealed to the state's Human Rights Appeal Board.[17]

If the DHR issues a NPC determination, the complaint can be appealed to the hearing examiner. The examiner's decision is again subject to review by the appeals board. Complaints can be settled at any point in the process. Any final order of the appeals board can be appealed though the appellate levels of the New York State courts.[18]

Factors Associated With Complaint Outcome

Although the ADEA has been the subject of much literature,[19] little attention has been paid to empirical studies explaining the outcome of ADEA litigation and complaint processing. This chapter seeks to fill that gap by examining to what extent certain personal and socio-economic characteristics influence the resolution of age discrimination claims.

As a result of the novelty of the study, little research exists on identifying factors which may predict whether an individual worker will experience success when filing an ADEA complaint. Schuster and Miller (1984a) concluded from an analysis of ADEA claims resolved in federal courts, that the sex of the complainant influences case outcome. Specifically, the research found women to be more successful as litigants in ADEA cases. The authors suggested that the added protection afforded women under Title VII, even when not asserted, may be influencing in a positive manner the treatment of women as ADEA complainants (Schuster & Miller, 1984a).

This same logic extends to the race of age discrimination complaints. It can be expected that older, nonwhites, enjoying the dual protection of Title VII and the ADEA, will have the merits of their claims examined on a more favorable basis. This should remain true even where race discrimination is not alleged, because the spectre of Title VII protection remains throughout the proceedings.

While age discrimination legislation seeks to protect older workers, the protective bracket of the ADEA for the time period studied spans 30 years, and states such as New York cover even broader age groupings. Thus, a 40 year old complainant may not necessarily be viewed in a manner equivalent to that of a 60 year old complainant. It is clear that the impact of negative personnel actions increases as a worker ages (Boglietti, 1974; Rosenblum, 1975). Assuming that this progression is not lost on decision-makers in the age discrimination complaint process, complainants in the upper bounds of the age bracket can be expected to experience more success in case outcomes.

In light of the special nature of state agency proceedings, where complaints often proceed without representation by counsel, it is suggested here that the complainant's level of education will influence case outcome. Thus, assuming that better educated workers are more equipped to prepare for the prosecution of their claims, it can be expected that the higher the education evel of the complainant the greater likelihood of success. The occupation of the complainant should be similarly associated with case outcome. Those workers which fall into a management or professional employment category, can be thought to be better suited for the organization of information and the assertion of arguments demanded by the complaint process. Thus, white collar workers should succeed more often than other occupational categories.

A causal relationship arguably exists between union membership and the outcome of complaints. Union workers functioning within the traditional grievance process should be more aware of the machinations involved in asserting workplace rights. Moreover, union workers who file age discrimination complaints against an employer will generally have the benefit of the support framework provided by the union. Therefore, a complainant's union status should be positively associated with case outcome.

As in the case in all employment discrimination litigation, there is a deference to an employer's right to hire, fire, promote or otherwise manage employees as it so wishes. This regard for management prerogatives has been found to be especially strong where the personal action is of great significance, such as discharge or early retirement (Schuster & Miller, 1984a). At the same time, the decision maker in the complaint process will find it more comfortable to force an employer's hand in matters such as promotions, transfers and compensation. As a result, it is asserted here the more severe the personnel action, the less likely complainants will experience success.

Summary of the Variables and the Methodology

Variables

Seven independent variables are considered in this study. The variables and their description are listed in Table 16.

Table 16

Study Variables

Age	(Under 40, 40-49, 50-59, 60 and over)
Sex	(Male, Female)
Race	(Non-white, White)
Education	(Elementary, Secondary, Some College, Post College)
Occupation	(Professional/Managerial, Sales/Clerical, Blue Collar, Laborer/Service)
Union Membership	(Non-union, Union)
Personnel Action	(Hiring, Discharge, Promotion/Demotion, Compensation/Condition of Employment)

Methodology

This research developed through several stages. First, a computer tape was obtained, containing information on all age discrimination in employment complaints filed with the State of New York Division of Human Rights (DHR) from January, 1976 through December, 1982. The data set initially contained 6,607 observations and 186 variables. The set provided information of personal and socio-economic characteristics of the complainants, the personnel action prompting the complaint, and procedural aspects of the complaint.

Second, the data set was scanned for purposes of disposing of complaints where age was not the sole basis for claiming employment discrimination.[20] Further deleted were information categories unusable due to an absence of adequate responses, or a lack of theoretical or logical relevance to the outcome of age discrimination complaints.

The above process resulted in a data set containing the seven independent variables, one dependent variable, and the number of observations ranging from 1394 to 6439. In order to permit a useful and manageable statistical analysis, categories for several variables were collapsed.[21]

The dependent, or outcome variable for the study was defined as a complaint resulting in either 1) conciliation, 2) a finding of probable cause (PC), or 3) a finding of no probable cause (NPC). Categories 2 and 3 refer to the initial determination by the agency investigation of the merits of the case. The first category includes those complaints conciliated (or/settled) prior to a probable cause determination. Due to the other stages of adjudication and appeal following the initial determination, the outcome variable used here does not necessarily represent a final resolution of each complaint. However, because of the absence in the data set of information on these latter stages, the outcome variable described here provided the most accessible and fair indication of complaint resolution.

Because the outcome variable is categorical and dichotomous, and does not meet the assumption of normal distribution, multiple regression could not be employed (Goodman, 1976). It was concluded, therefore, that the most appropriate statistical technique to use was log linear analysis (Feinberg, 1978). The procedure used is known commercially as FUNCAT, and is based on an approach developed by Grizzle, Starmer, and Koch (GSK) (1982). The GSK procedure makes use of a generalized (weighted) least squares routine.

Prior to the log-linear modeling of the variables, the population of complaints is described on the simple level by the presentation of frequency distributions and cross-tabulations with associated chi-squares in Tables 17 and 18.

Findings

Frequencies

As Table 17 indicates, age discrimination complainants under the New York State Human Rights Law have been predominantly male (60.8 percent). The vast majority of complainants have also been white (74.0 percent). It may be that women and non-whites are more likely to charge sex or race discrimination, historically viewed as more invidious than age discrimination (Blumrosen, 1982). Moreover, it may be that age discrimination legislation provides the only recourse for older, white males who believe they have unfairly suffered on adverse personnel action (Schuster & Miller, 1984a).

Among all complainants, 35.4 percent were designated as union members. This would be consistent with the proportion of union members in the New York State labor force.[22] This percentage could be considered somewhat high in light of unions' preference for the contractual grievance procedure for resolving workplace disputes. Generally, grievance procedures allow such issues to be adjudicated more quickly than in administrative proceedings and have a greater or equal likelihood of success (Oppenheimer & LaVon, 1979). Perhaps older workers are concerned with the need for union leadership to show concern for the job security of all workers. Such political interests could create the impression that full union support, for example in discharge cases, is unlikely to surface.[23]

In contrast to ADEA claims brought in the federal courts (Schuster, & Miller, 1984a), most complainants in the state actions were not professional or managerial employees. Sales and clerical employees filed the most complaints (35.9 percent), while professionals or managers were involved in 24.2 percent of the cases. The reduced costs of pursuing a state claim may be more accomodating to lower wage earners, facilitating their redress of grievances.

The educational level attained by complainants reflects the occupational distribution. The largest segment of complainants

Table 17

Frequencies and Percentages of Complaint Characteristics

	Frequency	Percentage*
A. Sex (N=6224)		
Male	3783	60.8
Female	2441	39.2
B. Race (N=2701)		
Non-white	701	26.0
White	2000	74.0
C. Age (N=6439)		
Less than 40	1587	24.6
40-49	1202	18.7
50-59	2392	37.1
60 and over	1258	19.5
D. Education (N=4696)		
Elementary	232	4.9
Secondary	2146	45.7
Some College	1753	37.3
Post College	565	12.0
E. Occupation (N=3422)		
Professional/Managerial	828	24.2
Sales/Clerical	1230	35.9
Blue Collar	918	26.8
Laborer/Service	446	13.0
F. Personnel Action (N=5879)		
Hiring	1119	19.0
Discharge	3366	57.3
Promotion/Demotion	607	10.3
Compensation/Conditions of Employment	787	13.4
G. Union Membership (N=1394)		
Non-union	901	64.6
Union	493	35.4

(Table 17 Continued)

H. Outcome (N=4925)

Conciliation	939	19.1
No Probable Cause	3058	62.1
Probable Cause	928	18.8

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*The percentages may not sum to a hundred due to rounding.

had finished high school (45.7 percent), while 37.3 percent had finished between 1-4 years of college.

Unlike the ADEA, which during the time period studied protected workers in the 40-70 age bracket, the Human Rights Law covered workers ages 18-65. As a result, a proportion of the claims were filed by individuals under 40 years of age (24.6 percent). At the same time, thirty-seven percent of the actions have been filed by those employees between the ages of 50-59. Thus, it would appear the HRL is receiving the most attention by those employees likely to be in greatest need of protection. That is, those older workers who: (1) have reached the end of their career path with a particular organization, (2) are priced higher than young workers, (3) would find it difficult to start over, and (4) are not yet close enough to the security of retirement benefits. This is particularly important in light of research concluding that workers in the 55 and over age group have the highest rate of discouraged workers of any age group, and the general finding that the risk of long-term unemployment increases significantly for non-working males reaching the age of 50 (Boglietti, 1974; Rosenblum, 1975).

Previous research concerning federal court actions under the ADEA showed that the majority of claims were prompted by the personnel actions of discharge or involuntary retirement (Schuster & Miller, 1984a). From Table 17, it can be seen the state analysis produced similar results, where discharge or involuntary retirement was the challenged personnel action in 57.3 percent of the cases. Older workers may tolerate less severe forms of age-based employment discrimination, and publicly address their grievances only when separation occurs.

Table 17 also reports on the outcome of complaints filed under the Human Right Law. Among all cases, a finding of "no probable cause" of discriminatory conduct occurred 62.1 percent of the time. This employer success rate may support Galanter's proposition that frequent litigators have advantages over less frequent litigators (Galanter, 1979). Thus, employing Galanter's taxonomy, the employee-complainant may be considered a "one-shotter," and the employer-defendant a "repeat-player." Because of their position and greater expertise, repeat-players are expected to "settle" weaker cases and litigate stronger cases. It might be expected that employees have a more favorable prelitigation success rate.

In fact, this last proposition draws some support from the results of the conciliation efforts. Conciliation preliminary to a resolution of the probable cause issue was successful in 19.1 percent of the cases. Conciliation can reasonably be interpreted as containing some measure of success for the complainant. Yet, even when combined with the proportion of probable cause findings (18.8 percent), it is apparent that employers have consistently mounted successful defenses.

Cross-Tabulations and Chi-Squares

Through the use of cross-tabulations and associated chi-squares, significant relationships were found between many variables. Table 18 provides a summary of the relationship of the seven independent variables, and their impact on complaint outcome.

This section also reports on the relationship among the independent variables, with their effects summarized in Table 19. It must be noted that the significance of many of these

Table 18

Complaint Outcome Cross-Tabulations

Variables	N	Chi-Square	DF	Probability
Outcome X Sex	4729	29.00	2	.0001*
Outcome X Race	1706	16.53	2	.0003**
Outcome X Age	4925	36.35	6	.0001*
Outcome X Education	3841	8.89	6	.1797
Outcome X Occupation	3031	29.43	6	.0001*
Outcome X Union Membership	883	4.76	2	.0926
Outcome X Personnel Action	4452	88.66	6	.0001*

$^*p \leq .0001$ $^{**}p \leq .001$

relationships may be a function of the large sample size. As a result, in addition to its descriptive function, this cross-tabulation analysis serves primarily to identify those variables appropriate for introduction into the more sophisticated log-linear analysis.

Sex

Contrary to our hypothesis, males seem to experience significantly greater success than females when filing age discrimination complaints (X^2=29.00; p =.0001). While males filed 60.4 percent of the complaints, they received 68.3 percent of the PC findings. Among all males, 61.2 percent suffered NPC finding and 20.8 percent enjoyed PC findings, while 64.5 percent of females received NPC findings and only 14.7 percent managed PC findings.

Three possible explanations are offered for this sex difference. First, females with strong claims of employment discrimination may prefer pursuing their complaint as sex-based, rather than age-based, leaving the more marginal claims for age discrimination. Second, the age discrimination provision has essentially become the only channel through which white males may challenge discriminatory conduct. As a result, male plaintiffs with meritorious claims are heavily represented in the population of age complaints. Third, the employment status of men may be viewed with more concern due to their traditional role as family supporter. At the same time, it should be noted that females

Table 19

Selected Cross Tabulations of Complaint Characteristics

Variables	N	Chi-Square	DF	Probability
1. Sex				
Sex X Race	2697	23.11	1	.0001*
Sex X Occupation	3392	240.8	3	.0001*
Sex X Personnel Action	5676	21.74	3	.0001*
2. Race				
Race X Education	2390	46.19	3	.0001*
Race X Occupation	895	4.22	3	.2390
Race X Union	1321	40.55	1	.0001*
Race X Personnel Action	2565	3.00	9	.3910
3. Age				
Age X Sex	6227	57.54	3	.0001*
Age X Race	2701	66.64	3	.0001*
Age X Union	1394	8.28	3	.0406**
Age X Personnel Action	5879	303.71	9	.0001*
4. Education				
Education X Occupation	2819	717.99	9	.0001*
Education X Personnel Action	4281	106.77	9	.0001*
5. Occupation				
Occupation X Personnel Action	3036	152.7	9	.0001*
6. Union				
Union X Personnel Action	1329	162.11	3	.0001*

*$p \leq .0001$ **$p < .05$

were more successful at the conciliation stage, bringing 39.6 percent of all complaints, but achieving 43 percent of all conciliations. It may be that employers, wary of the effect of the dual Title VII - ADEA protection discussed earlier, seek an early settlement to the more meritorious claims.

The sex of complainants differed significantly among the occupational categories (X^2=240.80; p=.0001). In particular, while females filed 41.2 percent of all complaints, they brought 57.4 percent of those claims falling into the Sales/Clerical category. Among Professional/Managerial, Blue Collar and Laborer/Service employees, males predominated by at least a 2 to 1 ratio. This sex difference between the Sales/Clerical workers category and the other three categories is also evidenced within the groups, where sales or clerical workers are alone responsible for 50.2 percent of all complaints by females. In contrast, the highest concentration of complainants among males is 37.4 percent for blue collar workers. In view of the traditional placement of women in the job market, these findings are to be expected.

Discharge was more an issue among female complainants than males (X^2=21.74; p=.0001). Sixty-one percent of females charged illegal termination, compared to 56 percent of the males. The male complainants were more concerned with obtaining employment, bringing 61 percent of all complaints, but 66.8 percent of those involving hiring.

Race

On the basis of their dual protective status, it was predicted that non-whites would fare better than whites in the outcome of complaints. However, our results indicate otherwise, with non-whites experiencing significantly less success than whites (X^2=16.53; p=.0003). Among non-whites, 72.7 percent of their claims resulted in a NPC finding as compared to 65.8 percent for whites. While both races experienced similar success at conciliation, whites had 13.5 percent of their complaints result in PC findings, with only 5.9 percent of non-white complainants receiving PC determinations. At the same time, whites brought 78 percent of the claims, but enjoyed 89 percent of all PC findings.

These results may be explained along lines similar to our discussion of the effect of sex on complaint outcomes. Since racial discrimination can be viewed as more invidious, a race discrimination complainant can expect to have their grievance addressed with greater scrutiny. Thus, non-whites with meritorious claims choose the more established route of race-based discrimination. In addition, the success of non-whites may be influenced by the previously noted inability of females to receive a higher proportion of PC findings. Non-white complainants were 47.9 percent female, while only 37.6 percent of whites were female (X^2=23.11; p=.0001). Thus, white males appear to have the highest probability of obtaining a PC determination.

There was no significant relationship between race and occupation or race and the challenged personnel action. There was significance exhibited in the relationship between race and education (X^2=46.19; p=.0001). However, the finding seems to stem primarily from the variation between non-white and white representation at the elementary and post-college levels. While non-whites filed 20.8 percent of the claims, they represented 43.7 of those complainants with no more than an elementary school education. At the same time, those complainants with a post-college schooling were non-white just 15.3 percent of the time. The secondary and college categories displayed no remarkable variation by race.

Age

It was expected that older members of the protected age bracket would fare better than younger bracket members. However, there appears to be mixed support for that hypothesis (X^2=36.35; p=.0001). While the under 40 age group filed 25.4 percent of the complaints, they received 30.3 percent of the PC findings. The 40-49 age group, however, filed 18.7 percent of all complaints, but received only 15.2 percent of PC findings. At the same time, the 50-59 age group filed 36.9 percent of the complaints, but enjoyed a slightly reduced 35 percent of PC findings. In addition, the 40-49 and 50-59 groups suffered the highest proportions of NPC findings, 67.7 percent and 62.7 percent, respectively.

Interestingly, though, among those complainants 60 and over, only 57.6 percent received NPC findings, the lowest proportion of all age groups. Similarly, the 60 and over group experienced 22.9 percent of all conciliations and 19.5 percent of PC findings, while filing 19.0 percent of the claims. While somewhat at odds, these results do suggest that if the under 40 age group is eliminated from consideration, allowing more parallel comparison to the age bracket of the federal ADEA, then older bracket members do experience greater success than their younger counterparts. Yet, these findings suggest that those workers cited earlier as in greatest need of protection, age 50-59, are in fact failing in these claims most often.

There were significant relationships between age and sex of complainants (X^2=57.54; p=.0001) and age and the personnel action at issue (X^2=303.71; p=.0001), though not unexpected. Consistent with the influx of women into the labor force in recent years, the under 40 complainants were 55.9 percent male and 44.1 percent female. A similar proportion held for the 40-49 group, while those 50-59 and 60 above had considerably higher male/female ratios (61.4 to 38.6 percent and 69 to 31 percent, respectively).

This higher representation of males, who we know receive more PC findings than females among those complainants 50 and older, may help explain this age group's edge over the 40-49 age group in success rate. Similarly, this higher propensity to receive PC findings may be reinforced by the greater proportion of whites among those age 50-59 and 60 and over. Among whites, 40.5 percent were between 50-59, and 23.9 percent were 60 and over, while only 32.7 and 15 percent of non-whites fell into these age groups (X^2=66.64; p=.0001), respectively. At this point, notwithstanding the under 40 age group, it seems that white males who fall at the upper end of the age bracket have the greatest likelihood of success.

As also might be expected, there was a highly significant relationship between the complainant's age and the personnel action at issue. The under 40 age group, more concerned with obtaining employment, filed 24.4 percent of the complaints, but were responsible for 36.6 percent of all cases where hiring was at issue. A similar result was true for the 40-49 group, with 18.8 percent of the hiring complaints. At the same time, the older members of the age bracket, in consideration of their reduced prospects exhibited a greater propensity for efforts at maintaining their jobs. The 50-59 age group filed 37.5 percent of all complaints, but were involved in 41.9 percent of the complaints where discharge was at issue. The 60 and above group followed this pattern, bringing 19.3 percent of complaints, and 22.2 percent of those involving discharge. This finding may also be explained by an employer's tendency to discharge or involuntarily retire more expensive and presumably less trainable older workers.

Education and Occupation

Contrary to our hypothesis, there was no significant relationship between a complainant's educational level and the likelihood of success. While within groups those complainants with no more than an elementary school education received the highest proportion of NPC findings (68 percent) and least share of PC findings (14.2 percent), the other educational levels displayed no discernible variation in success rate, either in conciliation or the receipt of PC determinations. In terms of explanation, it may be that our premise that the more educated worker is capable of better preparation in prosecuting a complaint is faulty, although intuitively this would not seem to be the case. It is more likely that, absent the usual services of legal counsel, all employees are significantly disadvantaged in challenging the employer, a more experienced litigator.

It would be expected that the education of complainants and their occupation would be significantly related, and this proved to be the case (X^2=717.99; p=.0001). While Professional/Managerial employees filed 23.2 percent of the claims, they represented 29.8 percent of all complainants with at least some college and 64.3 percent with a post-college education. At the same time, the Blue Collar and Laborer/Service categories combined for 87.6 percent of all complainants with an elementary level education.

Interestingly, however, this association did not result in occupation paralleling education's effect on case outcome. As we anticipated, the Professional/Managerial employees experienced markedly greater success in obtaining PC findings (X^2=29.43; p=.0001). While those employees filed 22.6 percent of the claims, they received 29.3 percent of the PC determinations.

Within the occupational categories, Professional/Managerial suffered the lowest proportion of NPC findings (55.9 percent), while Sales/Clerical (60.0 percent), Blue Collar (64.0 percent) and Laborer/Service (66.8 percent) workers received an increasingly higher proportion of NPC findings.

It would appear that the pursuit of age discrimination claims is most receptive to professional or managerial employees. This finding is consistent with previous research on federal court actions filed under the ADEA (Schuster & Miller, 1984a). It can also be viewed as support for the assertion that workers experienced in the use and management of information, with more refined communications skills, are better able to press their grievances, resulting in a greater likelihood of success. In comparing this finding to the absence of an effect of education on outcome, it would seem that in the litigation of age discrimination complaints, the skills and abilities developed through a particular work experience may be of greater assistance than a formal education.

Union Membership and Personnel Action

The relationship between union membership and outcome failed to display the level of significance required to support the hypothesis that union members experience more success. This could be considered as somewhat surprising, in light of established advocacy resources available to most union members. However, it may be that those union members filing claims are merely forum shopping following a rebuke from the union grievance process. Such claims are likely to be weaker in substance. It should be noted, however, that union members did enjoy some measure of success over non-union workers. While union members filed only 33.0 percent of the claims, they received 41.9 percent of the PC findings. Thus, there does appear to be some residual benefit to being a union member, although it is not exhibited in a statistically significant manner.

Although there was no significant relationship between union membership and sex, there was between union membership and race (X^2=40.55; p=.0001). Within racial groupings, 49.7 percent of non-whites were union members, while white claimants were only 29.9 percent union. In addition, non-whites filed 23 percent of the claims, but 33.2 percent of those filed by union members.

There was a notable relationship between union membership and personnel action (X^2=162.11; p=.0001). Non-union workers filed 66.9 percent of the complaints, but were responsible for 79.3 percent of those claims charging illegal termination and 73.2 percent of claims alleging illegal hiring practices. It is clear that to some extent, union members are not forced to challenge these two personnel actions as often as non-union workers. This finding may be the result of 1) collective bargaining agreements which generally require the establishment of "just cause" for discharge and 2) greater union influence on the hiring process, e.g. hiring halls. Interestingly, however, union members filed 61.3 percent of those complaints involving promotion or demotion, and 54.1 percent of claims alleging illegal bias in compensation or condition of employment. Thus, while union members may experience less discrimination in obtaining and maintaining employment, the less flexible staffing and compensation policies of a union environment may lead them to the complaint process. Indeed, since unions find themselves bound by their work rules, such as seniority, and must accommodate several constituencies, the contractual grievance procedure does not necessarily offer a viable alternative, often forcing workers into an external grievance process.

As hypothesized, complainants were least successful when the personnel actions involve hiring or discharge (X^2=88.66; p=.0001). Where refusal to hire was the disputed action, 68 percent of the cases resulted in NPC findings, with only 17.4 percent resulting in PC findings. In discharge or involuntary retirement cases, 62.8 percent suffered NPC findings, while just 18.9 percent received a PC result.

To contrast, in promotion/demotion cases, complainants received PC findings only 13.7 percent of the time, but arranged conciliation agreement in 29.6 percent of the cases, as compared to 14.5 percent and 18.3 percent for hiring and discharge, respectively. Among those cases where compensation or employment conditions were at issue, 52 percent experienced NPC findings, while 28.3 percent gained PC results. Moreover, while the compensation/conditions of employment category was responsible for 12.6 percent of the claims, it received 18.6 percent of all

PC findings. Thus, as the personnel action lessens in severity, the more successful complainants are.

Three explanations are offered. First, employers may be more attentive to personnel actions involving hiring and discharge, and therefore better prepared to defend them. Second, an employer's vested interest in hirings and discharges could be viewed as heavier than in other job status--type actions, with the result that the former personnel actions receive a more fervent defense. Third, the state agency may be less willing to intrude on traditionally core management prerogatives, such as the right to hire and dismiss.

The personnel action exhibited a significant relationship with education (X^2=106.77; p=.0001) and occupation (X^2=152.70; p=.0001). Among all levels of education, discharge was the primary source of grievances. However, among post-graduates, discharge was the issue a relatively low 43.5 percent of the time, while refusal to hire was the disputed personnel action a relatively high 31.7 percent of the time. It may be that employers are hesitant to hire older, well-educated workers who have likely been relatively higher paid in former jobs. This is consistent with research concluding that workers aged 50 and over have a significantly more difficult time obtaining employment (Boglietti & Rosenblum, 1975). This proposition is strengthened when the significant relationship between education and age is examined. It is discovered here that among those complainants with post-graduate education, 54 percent are age 50 and above.

Among professionals, 35.3 percent of the cases involve the issue of early discharge. This figure is low relative to the sales/clerical category (54.8 percent) and blue collar workers (46 percent). However, professionals or managers file considerably more of their complaints on job status issues, e.g., promotion, conditions of employment, and compensation (43 percent) than do the other occupational categories. It would appear that professional workers are more secure in their employment situation, placing greater emphasis on improving on that situation.

Models to Explain Outcomes

The variables which did not prove to be significant influences on case outcome were education and union membership, and were omitted from further analysis. The variables which were analyzed further were sex, race, age, occupation and personnel action. A log-linear analysis was used on a series of two and three variable combinations.[24] The four variables which were consistently significant and stable across all combinations were sex, race, age and personnel action.[25]

In recognition of our earlier concern with the interaction between age discrimination and Title VII complainants, the discussion and results presented will focus on the variables of sex, race and age. The results are reported in Table 20 through Table 24.

Table 20 indicates the log odds of a nonwhite male receiving a finding of no probable cause (NPC) versus one of probable cause (PC) are greater than those for a white male (2.6008-1.322 = 1.286). This also held true for white males and black females. At the same time, white females and blacks were more likely to conciliate their claims. It is suggested here that the dual protection afforded older minority employees may provide an incentive for employer to settle the more meritorious of these claims.

In Table 21, our modeling of sex and age reveals that male complainants over 49 years of age suffer the least from NPC findings. While females in both age groupings experienced the greatest propensity for receiving NPC findings, they were again more likely to successfully engage in conciliation. This may be explained not only by the "dual protection" incentive to settle, but by the fact that, on the whole, the more meritorious of female claims are brought exclusively under the sex discrimination provision of the HRL. As a result, older females bringing age discrimination claims may also have an incentive to conciliate, and avoid a determination on the merits. This same reasoning can be extended to both females and blacks.

Table 22 provides the results of a log odds comparison for a model containing race and age. There is again a considerable effect of race, with non-whites in both age groupings suffering significantly higher rates of NPC findings. This model also illustrates the greater tendency for non-whites to have their

TABLE 20

LOG ODDS OF RECEIVING A "CONCILIATION/WITHDRAWAL" OR A "NO PROBABLE CAUSE" OUTCOME AS A FUNCTION OF RACE AND SEX

			RESPONSE PROBABILITIES			RESPONSE FUNCTION (LOG ODDS) COMPARED TO PROBABLE CAUSE	
RACE	SEX	SAMPLE SIZE	CONCILIATION/ WITHDRAWAL	NO PROBABLE CAUSE	PROBABLE CAUSE	CONCILIATION WITHDRAWAL	NO PROBABLE CAUSE
White	Male	694	.199	.633	.169	.165	1.322
White	Female	403	.233	.687	.079	1.078	2.158
Nonwhite	Male	138	.261	.688	.051	1.638	2.608
Nonwhite	Female	119	.168	.765	.067	.916	2.431

TABLE 21

LOG ODDS OF RECEIVING A "CONCILIATION/WITHDRAWAL" OR A "NO PROBABLE CAUSE" OUTCOME AS A FUNCTION OF SEX AND AGE

			RESPONSE PROBABILITIES			RESPONSE FUNCTION (LOG ODDS) COMPARED TO PROBABLE CAUSE	
SEX	AGE	SAMPLE SIZE	CONCILIATION/ WITHDRAWAL	NO PROBABLE CAUSE	PROBABLE CAUSE	CONCILIATION WITHDRAWAL	NO PROBABLE CAUSE
Male	40-49	525	.170	.672	.158	.070	1.448
Male	Over 49	1735	.197	.600	.205	-.040	1.070
Female	40-49	394	.170	.683	.147	.144	1.534
Female	Over 49	1002	.225	.634	.142	.460	1.498

claims resolved through conciliation. Among both race groupings, older complainants received more PC findings than those complainants between ages 40-49.

When race, sex and age were modeled, as described in Table 23, significant effects were produced for each variable. Non-white complaints, with one exception, experienced the highest likelihood of receiving NPC findings. The exception were non-white females over age 49, who enjoyed slightly more success than whites in the same age category. This latter finding is consistent with the earlier results from Table 21 and Table 22, where among both the sex and race groupings, those complainants aged 49 and over were more likely to avoid NPC determinations.

As seen previously in Table 20, white males again received the lowest proportion of NPC findings. This rate of success increased for white males over age 49. Noting the exception of white females over age 49, among each category of race, male complainants were less likely to suffer NPC findings than their female counterparts. In general, those complainants over age 49 suffered the least number of NPC findings. The only exception were white females, who as discussed above, had a greater likelihood of receiving a NPC finding than older non-white females.

In Table 24, race and sex are modeled with the personnel action at issue, and white males are again confirmed as the most successful complainants. However, the effect of the personnel action was highly significant. For example, both white and non-

TABLE 22

LOG ODDS OF RECEIVING A "CONCILIATION/WITHDRAWAL" OR A "NO PROBABLE CAUSE" OUTCOME AS A FUNCTION OF RACE AND AGE

			RESPONSE PROBABILITIES			RESPONSE FUNCTION (LOG ODDS) COMPARED TO PROBABLE CAUSE	
RACE	AGE	SAMPLE SIZE	CONCILIATION/ WITHDRAWAL	NO PROBABLE CAUSE	PROBABLE CAUSE	CONCILIATION WITHDRAWAL	NO PROBABLE CAUSE
White	40-49	251	.163	.721	.116	.346	1.831
White	Over 49	846	.226	.632	.142	.465	1.495
Nonwhite	40-49	78	.218	.756	.026	2.140	3.384
Nonwhite	Over 49	180	.217	.711	.072	1.099	2.287

TABLE 23

LOG ODDS OF RECEIVING A "CONCILIATION/WITHDRAWAL" OR A "NO PROBABLE CAUSE" OUTCOME AS A FUNCTION OF RACE, SEX AND AGE

				RESPONSE PROBABILITIES			RESPONSE FUNCTION (LOG ODDS) COMPARED TO PROBABLE CAUSE	
RACE	SEX	AGE	SAMPLE SIZE	CONCILIATION/ WITHDRAWAL	NO PROBABLE CAUSE	PROBABLE CAUSE	CONCILIATION WITHDRAWAL	NO PROBABLE CAUSE
White	Male	40-49	138	.138	.732	.130	.054	1.725
White	Male	Over 49	556	.214	.608	.178	.184	1.228
White	Female	40-49	113	.195	.708	.097	.693	1.984
White	Female	Over 49	290	.248	.679	.072	1.232	2.239
Nonwhite	Male	40-49	37	.297	.676	.027	2.400	3.219
Nonwhite	Male	Over 49	101	.248	.693	.059	1.427	2.457
Nonwhite	Female	40-49	41	.146	.829	.024	1.792	3.526
Nonwhite	Female	Over 49	78	.180	.731	.090	.693	2.097

TABLE 24

LOG ODDS OF RECEIVING A "CONCILIATION/WITHDRAWAL" OR A "NO PROBABLE CAUSE" OUTCOME AS A FUNCTION OF RACE, SEX AND PERSONNEL ACTION

				RESPONSE PROBABILITIES			RESPONSE FUNCTION (LOG ODDS) COMPARED TO PROBABLE CAUSE	
RACE	SEX	PERSONNEL ACTION	SAMPLE SIZE	CONCILIATION/ WITHDRAWAL	NO PROBABLE CAUSE	PROBABLE CAUSE	CONCILIATION WITHDRAWAL	PROBABLE CAUSE
White	Male	Refuse to Hire	105	.219	.676	.105	.738	1.865
White	Male	Early Discharge	371	.175	.674	.151	.149	1.496
White	Male	Promotion/Demotion	57	.386	.474	.140	1.012	1.216
White	Male	Compensation/Cond	137	.161	.562	.277	-.547	.706
White	Female	Refuse to Hire	36	.167	.722	.111	.405	1.872
White	Female	Early Discharge	227	.216	.687	.097	.801	1.959
White	Female	Promotion/Demotion	43	.209	.744	.047	1.504	2.773
White	Female	Compensation/Cond	83	.349	.602	.048	1.981	2.526
Nonwhite	Male	Refuse to Hire	17	.059	.882	.059	0	2.708
Nonwhite	Male	Early Discharge	68	.265	.706	.029	2.197	3.178
Nonwhite	Male	Promotion/Demotion	12	.500	.500	.000	2.484	2.484
Nonwhite	Male	Compensation/Cond	33	.303	.576	.121	.916	1.558
Nonwhite	Female	Refuse to Hire	10	.000	.900	.100	-.69	2.197
Nonwhite	Female	Early Discharge	59	.186	.746	.068	1.012	2.398
Nonwhite	Female	Promotion/Demotion	10	.500	.400	.100	1.609	1.386
Nonwhite	Female	Compensaiton/Cond	34	.118	.824	.059	.693	2.639

white males experienced their highest level of success where the issue involved compensation or condition of employment. Where the complaint alleged discriminatory promotion or demotion practices, non-white females received the lowest proportion of NPC findings.

Across all personnel actions, both white males and white females generally enjoyed greater success than their non-white counterparts. Within the non-white category, however, females were more successful in three of the four categories of personnel actions.

Conclusions

The results reported indicate the New York State age discrimination provision has become the primary device for white males in redressing arbitrary personnel decisions. This finding is consistent with the experience of the ADEA in federal court, and serves to create a potential conflict between the employment rights of older workers and those of workers protected under Title VII-type legislation. Indeed male complainants proved more successful than female complainants, while whites fared better than nonwhites. This emphasizes the spectre of conflict between the enforcement of age discrimination and Title VII legislation.

Across occupation, professional and managerial employees enjoyed the greatest success. However, again consistent with the federal court experience, employers successfully defended the majority of complaints. This was particularly true where the personnel action involved a discharge or failure to hire.

There was a similar propensity for complainants either to reach a conciliation agreement or to receive a PC finding. Nonwhites complainants took particular advantage of the conciliation alternative. This finding may reflect both the complainants, and white male complainants desire to use to full advantage their primary source of employment rights.

While the study identified the degree to which complainants conciliate claims, there was no data available to determine whether the complainants significantly benefitted from the conciliation agreements reached. This is a qualitative issue demanding further research.

Future research is also required on the issue of whether the full enforcement of both age discrimination legislation and Title VII-type legislation, will result in older white males and minorities utilizing their respective statutory rights in competition for the same employment opportunities.

NOTES

1. Age Discrimination in Employment Act of 1967, 29 U.S.C. Section et seq. as amended (1986). See also Senate Report No. 95-493, 95th Cong. 2nd Sess., reprinted in (1978) U.S. Code Cong. and Admin. News 976.

2. Note, "EEOC Reports Increase in Age Discrimination Complaints," Aging and Work, Vol. 4, No. 4 (Fall 1981), pp. 81-82.

3. See 29 U.S.C 633 (b).

4. Oscar Mayer & Co. v. Evans, 441 U.S. 750 (1979).

5. The complainant can still bring a federal action, subject to a 60-day waiting period following the institution of a state claim.

6. Executive Law, Art. 15, Section 296 et. seq. (hereinafter cited as "Executive Law").

7. See U.S. Bureau of the Census Current Population Reports: Population Estimates and Projections, Series P-25 (1979).

8. See generally U.S. Department of Labor, Report to the Congress on Age Discrimination in Employment under 715 of the Civil Rights Act of 1964, 11, 15 (1965)(because of lower educational attainment and changes in technology, older workers more affected by discrimination), [hereinafter cited as Secretary's Report]

9. See id. at 21-22 (in order to reduce age discrimination, employers should develop system of continual training and educational opportunity in order to prepare workers for job changes while still employed).

10. 42 U.S.C. §2000e et seq.

11. In addition to the District of Columbia, the states with certified and designated statewide deferral agencies are: Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. 29 C.F.R. §1601.80 (1985).

12. Executive Law, Section 290 et seq.

13. Executive Law, Section 296 (3a)(a).

14. Executive Law, Section 293.

15. The ADEA requires that, in states that have a law prohibiting age discrimination in employment, complainants first must file under the state law. 29 U.S.C. § 633(b) (1982). Section 633(b) provides in relevant part:

> In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such

> discriminatory practice, no suit may be brought under section 626i of this title before the under expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated.

16. Executive Law, Section 297.

17. Executive Law, Section 297-a.

18. Executive Law, Section 298

19. For example, see Age Discrimination: A Symposium, 32 Hastings L.J. 1093 (1981) (articles on constitutional provisions concerning age discrimination, transfer of enforcement authority under ADEA to EEOC, burdens of proof and use of statistics under ADEA, and optin class actions under ADEA); Blackburn, Charging Compliance Under the Age Discrimination in Employment Act, 57 Chi.-Kent L. Rev. 559 (1981) guidelines for compliance with Act, 1978 amendments and interpretative regulations); Calille, Three Developing Issues of the Federal Age Discrimination in Employment Act of 1967, 54 U. Det J. Urb. L. 431 (1977) (policy and implementation of federal age discrimination legislation differs from those of race and sex discrimination legislation, and society, rather than individual employers, should bear cost of employing aging workers); Goldman, ADEA's Section 633(b) Deferral Provisions: A Trap for Unwary Plaintiffs, 34 Lab. L.J. 632 (1983) (deferral under ADEA not required for persons protected from age discrimination by state law); Hill & Bishop, Aging and Employment: The BFOQ Under the ADEA, 34 Lab. L.J. 763 (1983) (courts narrowly construe bona fide occupational qualifications defense to age discrimination under the ADEA); Kovarsky & Kovarsky, Economic, Medical and Legal Aspects of the Age Discrimination Laws in Employment, 27 Vand. L. Rev. 839 (1974) (medical aspects of age discrimination emphasized); Levien, The Age Discrimination in Employment Act: Statutory Requirements and Recent Developments, 13 Duq. L. Rev. 227 (1974) (plaintiff's burden of proof and defenses available to employers.); National Conference on Constitutional and Legal Issues Relating to Age Discrimination and the Age Discrimination Act, 57 Chi. Kent L. Rev. 805 (1981) (articles on the social functions of age distinctions; constitutional provisions concerned with age discrimination; and effectiveness of ADEA); Player, Defenses Under the Age Discrimination in Employment Act: Misinterpretation, Misdirection, and the 1978 Amendments, 12 Ga. L. Rev. 747 (178) (pre-and postamendment analysis of defenses for bona fide occupational qualifications, bona fide seniority systems, and bona fide benefit plans under 1978 amendments); Player, Proof of Disparate Treatment Under the Age Discrimination in Employment Act: Variations on a Title VII Theme, 17 Ga. L. Rev. 621 (1983), (cases decided after McDonnell Douglas Corp.

v. Green, 411 U.S. 792 (1973), demonstrate that plain-tiff's burden easier to satisfy and defendant's burden some what easier to satisfy under ADEA than under Title VII); Player, Title VII Impact Analysis Applied to the Age Discrimination in Employment Act: Is a Transplant Appropriate?, 14 U. Tol. L. Rev. 1261 (1983) (employers should not be required to prove business necessity, only reasonableness, to rebut proof of disparate impact on basis of age.); Rosenblum & Biles, The Aging of Age Discrimination: Evolving ADEA Interpretations and Employee Relation Policies, 8 Empl. Rel. L.J. 22 (1982), (summary of recent decisions and compliance advice on bona fide occupational qualification; defense of reasonable factors other than age; and burdens of proof under ADEA); Schuster & Miller, Performance Evaluations As Evidence in ADEA Cases, 6 Empl. Rel. L.J. 561 (1982) (courts accept less reliable evaluations, but formal appraisals significantly increased employer's chance of successful defense of ADEA claims) [hereinafter cited as Schuster & Miller]; Sharkin, "Will You Still Need Me...When I'm Sixty-Four?": Forced Retirement for Executives Under the ADEA, 11 U. Balt. L. Rev., 256 (1982) (section 631(c) should not allow involuntary retirement of high-ranking executives); Sheeder, Proceudral Complexity of the Age Discrimination in Employment Act: A Age-Old Problem, 18 Duq. L. Rev. 241 (1980) (Act's procedural requirements for suit unduly complex); Snyler & Brandon, Riding the Third Wave: Staying on Top of ADEA Complaints, 28 Personnel Ad. 41 (1983) (series of recommendations to employers on how to successfully defend ADEA complaints; Spahn, Resurrecting the Spruious Class: Opting-In to the Age Discrimination in Employment Act and the Equal Pay Act Through the Fair Labor Standards Act, 71 Geo L.J. 119 (1982) (opt-in class actions ought to be available after notice to class members, and named plaintiffs ought to exhaust administrative remedies on behalf of class).

20. That is, those complaints which claimed another basis for discrimination, such as race or sex.

21. For example, the race variable was constructed by designating all Blacks, Hispanics, Native Americans and Asians as "Non-White," all others as "White." For the occupation variable, professional, managerial and technical workers were grouped together, as were sales and clerical workers, craft workers and foremen, and laborers and service workers.

22. Handbook of Labor Statistics, Bureau of Labor Statistics, U.S. Department of Labor (Washington, D.C.: U.S. Government Printing Office, 1981).

23. See, for example, Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974).

24. A log linear technique is able to analyze variance, when both the independent and dependent variables are categorical. The technique uses expected frequencies occurring under a model to determine the odds of a case falling in one of the categories of the dependent variable. The present technique is based on an approach developed by Grizzle, Starmer and Koch (GSK) in Analysis of Categorical Data by Linear Models, Biometrics, 1969, 25, 499-504. The technical system used is distributed commercially as FUNCAT. SAS User's Guide; Statistics, SAS Institute, Cary, North Carolina (1982):

The key statistic for interpretation here is the log odds ratio. This ratio allows an assessment of the effect a combination of independent variables has on the odds of receiving a particular outcome. For example, in Table 15 the arithmetic odds that a white male employee would receive a "no probable cause finding" versus a "probable cause finding" is about 3.7 to 1, based on the ratio of response probabilities (.633/.169). The odds that a non-white female would receive a "no probable cause finding" versus one of "probable cause" is about 11.4 to 1 (.765/.067). The odds ratio (which compares how much the odds differ for the two groups) is calculated by 11.4/3.7 = 3.1. When the odds for both samples are the same, the ratio will be one. The ratio has an upper limit of plus infinity when the denominator is zero. It has a lower limit of zero when the numerator is zero. Since a ratio of 1.0 implies statistical independence, departures from 1.0 indicate essentially the same thing but with either positive or negative implications. The lack of symmetry which results because negative departures are bounded between "0" and "1.0" while positive departures are bounded between "1.0" and plus infinity makes this statistic difficult to interpret. This problem is rectified by using the natural log of the odds ratio, which varies from minus infinity to plus infinity with "0" indicating statistical independence. For these reasons, our comparisons will be described in terms of log odds.

For a helpful description of the GSK approach, see Reynolds, "The Analysis of Cross-Classifications, p. 187-213, The Free Press: New York (1977).

25. To avoid empty cells, only two and three variable models could be used.

CHAPTER SEVEN

THE FILING AND OUTCOME OF STATE AGE DISCRIMINATION COMPLAINTS: THE WISCONSIN EXPERIENCE

Introduction

The federal Age Discrimination in Employment Act (ADEA) was designed to protect older workers from arbitrary, capricious, and invidious employment discrimination, including the refusal to hire, promote, and provide fair compensation.[1] Since its enactment in 1967, the ADEA has developed into the primary vehicle for protecting the job security of older workers, and preserving and maintaining their economic security.

Recent years have seen a significant increase in the number of ADEA complaints filed with the Equal Employment Opportunity Commission (EEOC). In fiscal year 1983, the EEOC received 15,303 complaints brought under the ADEA-a 66 percent increase over fiscal year 1982.[2] The recent economic recession, where older workers suffered considerably through plant closings, layoffs and other workforce reductions, was a major factor in this growth. The increase has been reinforced by the raising of the age limitations on ADEA coverage from 65 to 70 (1978 Amendments) and increased publicity surrounding large money judgments.[3]

However, the ADEA was not designed to shoulder the entire burden of age discrimination in employment complaints. Where there exists a suitably effective state statute prohibiting employment discrimination based on age, the federal Act provides for the deferral of age discrimination complaints to the appropriate enforcement agency in each state.[4] Indeed, the U.S. Supreme Court has interpreted the ADEA as making mandatory the commencement of state proceedings in deferral states,[5] prior to any enforcement action under the federal law.

The effect of such provisions is to significantly enhance the role of state enforcement in promoting the equal treatment of older persons in employment matters. Moreover, as the costs and delays of courtroom litigation continue to mount, it can be expected that the resolution mechanism offered by state agencies will become increasingly attractive. At present, approximately three-fifths of the states maintain adequate legislation and an enforcement agency qualifying them as deferral states.[6]

The deferral of ADEA complaints to state agencies necessarily implies that the relevant state statute and enforcement process will effectively and fairly address the grievances of older workers. However, while the operation and impact of ADEA has been consistently scrutinized since its enactment, only one state law has been subject to an evaluation of their effectiveness in fulfilling the purposes of the ADEA (Schuster & Miller, 1984d).

Such state law evaluation is particularly important in light of employers' responsibility to comply with the demands of both age discrimination legislation and Title VII-type legislation.[7] That is, the increasing entrance of educated minorities and females into the workforce can be expected to impact on the employment status of the older white male. Previous research has shown the guarantees of the ADEA to be primarily utilized by this latter group (Blumrosen, 1982; Northrup, 1977; Schuster & Miller, 1984a). Thus, employers making personnel decisions have the "Hobson's Choice" of electing among employees equally endowed with federally protected employment rights, and each with the capacity and willingness to exercise those rights (Blumrosen, 1982). This conflict is confounded where employers must make personnel choices among not only minorities or women and older white males, but minorities and women also within the protected age bracket of the ADEA.

These dilemmas similarly confront state enforcement agencies. These agencies will seek to fulfill their mission under both statutes, only to encounter constituencies competing for limited employment opportunities (Blumrosen, 1982; McKenry, 1981). The result may be a policy of accommodation. The effect of any accommodation, though, could be expected to be a departure from the original purposes of both Title VII and the ADEA, and the resulting dilution of the policies of two major pieces of socio-economic legislation.

This chapter presents an empirical assessment of the experience and impact of the state of Wisconsin's enforcement of an age discrimination in employment statute. The chapter will focus on personal and workplace characteristics associated with the filing of age discrimination complaints, as well as how they influence the outcome of those complaints. In addition, the chapter traces the experience and resolution of age discrimination complaints as they are processed through the various procedural stages of a state enforcement agency.

Operation of the Wisconsin Law

The age discrimination in employment statute to be studied is a provision of the Wisconsin Fair Employment Law (FEL).[8] The statute is functionally similar to the ADEA, prohibiting the use of age as a factor in the hiring, promotion, compensation or discharge of individuals between the ages of 40-70.[9] The FEL is administered and enforced by the Wisconsin Equal Rights Division (WERD).[10] WERD is considered a qualified deferral agency by the EEOC, and therefore is initially responsible for the resolution of age discrimination claims.

Complaints filed with the WERD can be subject to several stages of processing. A complaint will first be investigated by the staff of the WERD. At that level, an attempt will be made to settle the dispute. If no settlement is forthcoming, the WERD issues a determination of whether there is probable cause (PC) or no probable cause (NPC) to believe that unlawful discrimination occurred. At this point, if a PC determination is made, the complaint proceeds to the conciliation stage, where attempts are again made to settle the claim. If conciliation is unsuccessful, the complaint is then presented at a public hearing before a hearing examiner, who determines whether unlawful discrimination exists. Any decision by the examiner may be appealed to the

Labor and Industry Review Commission (LIRC), which can affirm, reverse, or modify the decision.

If the WERD issues a no probable cause determination, the claim can be appealed directly to the hearing examiner. The examiner's decision is again subject to review by the LIRC. Complaints can be settled at any point in the process. Any final order of the LIRC can be appealed to the Wisconsin state courts.

Factors Associated with Complaint Outcome

As a result of the novelty of the study, little research exists on identifying factors which may predict whether an individual worker will experience success when filing an ADEA complaint. Schuster and Miller (1984a) concluded from an analysis of ADEA claims resolved in federal courts, that the sex of the complainant influence case outcome. Specifically, the research found women to be more successful as litigants in ADEA cases. The authors suggested that the added protection afforded women under Title VII, even when not asserted, may be influencing in a positive manner the treatment of women as ADEA complainants.

This same logic extends to the race of age discrimination complainants. It can be expected that older nonwhites, enjoying the dual protection of Title VII and the ADEA, will have the merits of their claims examined on a more favorable basis. This should remain true even where race discrimination is not alleged, because the spectre of Title VII protection remains throughout the proceedings.

While age discrimination legislation seeks to protect older workers, the protective bracket of both the federal ADEA and the Wisconsin statute span over 30 years. Since it is clear that the impact of negative personnel actions increases as a worker ages (Boglietti, 1974; Rosenblum, 1975), a 40-year-old complainant may not necessarily be viewed in a manner equivalent to that of a 60-year-old complainant. Assuming that this progression is not lost on decision-makers in the age discrimination complaint process, complainants in the upper bounds of the age bracket can be expected to experience more success in case outcomes.

As is the case in all employment discrimination litigation, there is a deference to an employer's right to hire, fire, promote or otherwise manage employees as it so wishes. This regard for management prerogatives can be expected to be particularly strong where the personnel action is of great significance, such as discharge, hiring, or early retirement (Schuster & Miller, 1984a). At the same time, the decision-maker in the complaint process will find it less intrusive to force an employer's hand in matters such as promotions, transfers and compensation. As a result, it is asserted here that the more severe the personnel action, the less likely complainants will experience success.

It can also be expected that an employee who suffers an adverse personnel decision through a highly structured personnel system, such as civil service, will be less able to attack the decision as arbitrary. Thus, public sector employees should receive fewer PC findings than various private sector employees.

Summary of the Variables and the Methodology

Variables

Four independent variables are considered in this study. The variables and their description are listed in Table 25.

Table 25

List of Independent Variables

1. Age (40-49, 50-59, 59 and over)
2. Race (White and Non-white)
3. Personnel Action (Compensation, Conditions of Employment, Discharge, Hiring and Promotion)
4. Industry (Manufacturing, Service, Retail, Public Sector, Transportation, Private Sector-Other, and Labor Organizations)

Methodology

The data source for this study was approximately 2600 age discrimination in employment complaints filed with the WERD from October 1973 to December 1983. The tape provided information on eight categorical variables, including the four independent variables (age, race, industry of the employer, and the disputed personnel action) and the four primary stages of complaint processing-investigation, conciliation, public hearing and LIRC review, with the outcome of the complaint at each of those stages. The most common examples of complaint outcome were: 1)

Withdrawal, 2) Settlement/No Settlement, 3) Probable Cause/No Probable Cause, 4) Conciliation/No Conciliation, and 5) Discrimination/No Discrimination.

In order to present a meaningful statistical analysis, several of the categories for variables in both groups were collapsed or deleted. For example, the race variable was constructed by designating all Blacks, Hispanics, Native-Americans and Asians as "Non-Whites," all others as "White."

Because the outcome variable is categorical and dichotomous, and does not meet the assumption of normal distribution, multiple regression could not be used here (Goodman, 1976). It was concluded, therefore, that the most appropriate statistical technique to use was log linear analysis (Feinberg, 1978). The procedure used is known commercially as FUNCAT, and is based on an approach developed by Grizzle, Starmer, and Koch (GSK) (Statistical Analysis System, 1982). The GSK procedure makes use of a generalized (weighted) least squares routine.

Prior to the log-linear modeling of the variables, the population of complaints is described by the presentation of frequency distributions and cross-tabulations with associated chi-squares in Tables 21 and 22.

Results and Analysis

Frequencies

As Table 26 indicates, 51.3 percent of age discrimination complainants under the FEL have been between the ages of 50-59.

Thus it would appear the FEL is receiving the most attention from those employees likely to be in greatest need of protection. That is, those older workers who: (1) have reached the end of their career path with a particular organization, (2) are priced higher than younger workers, (3) would find it difficult to start over, and (4) are not yet close enough to the security of retirement benefits (Schuster & Miller, 1984a). This is particularly important in light of research concluding that workers in the 55 and over age group have the highest rate of discouraged workers of any group (Rosenblum, 1975), and the general finding that the risk of long-term unemployment increases significantly for non-working males reaching the age of 50 (Boglietti, 1974).

The majority of complainants were also white (64.2 percent). It should be noted that while the Wisconsin data set did not provide gender information, previous research has established that age discrimination complainants are predominantly white males (Schuster & Miller, 1984a). It may be that women and non-whites are more likely to charge sex or race discrimination, historically viewed as more invidious than age discrimination (Blumrosen, 1982). Moreover, it is posited that age discrimination provides the only recourse for older, white males who believe they have unfairly suffered an adverse personnel action (Schuster & Miller, 1984a).

Earlier studies have also shown that the majority of age discrimination claims center on discharge as the principal issue

Table 26

Numbers and Percentages of Case Characteristics

Variables	Number	Percent
A. Ages		
40-49	748	29.1
50-59	1315	51.3
59+	502	19.6
Total	2565	100.0
B. Race		
White	1638	64.2
Non-White	915	35.8
Total	2553	100.0
C. Personnel Action		
Compensation	121	4.8
Conditions of Employment	890	35.6
Discharge	1149	46.0
Hiring	262	10.5
Promotion	78	3.1
Total	2500	100.0
D. Industry		
Manufacturing	904	35.3
Service	524	20.5
Retail	259	10.2
Public Sector	205	8.1
Transportation	74	3.0
Private Sector-Other	422	16.5
Labor Organizations	162	6.4
Total	2550	100.0

(Schuster & Miller, 1984a). Similar results were found here (46.0 percent). Older workers would be expected to exhibit little tolerance for the loss or denial of employment opportunities, and thus file a complaint. Interestingly, however, the second highest cause of complaints was the much less threatening "conditions of employment" (35.6 percent). This may be explained by the fact that the category "conditions of employment" is often dominated by claims of lost training opportunities. The acquisition of training is likely viewed by older workers as critical to maintaining a career path and performance level attractive to an organization.

As would be expected, the majority of claims came from the large industries, manufacturing (35.3 percent) and service (20.5 percent). It might not logically be expected, however, that the fairness of the employment policies of labor organizations would be subject to such dispute (6.4 percent).

From Table 27, it can be seen that at the investigation stage, the majority of claims (59.4 percent) result in a "no probable cause" finding. This proportion is consistent with previous research (Schuster & Miller, 1984a). At this stage, only 18.6 percent of complainants received a "probable cause" (PC) finding, and just 7.9 percent of the claims are settled.

Among those complainants receiving a NPC finding, 28.2 percent appealed to the hearing examiner. Those claims which received a PC finding, and then moved to the conciliation stage, were unsuccessfully conciliated 61 percent of the time. In addition, conciliation was waived in another 26.8 percent of the cases. It appears that conciliation here did not prove to be the success EEOC enforcement officials would hope. Those

Table 27

Number and Percentages of Case Outcomes

Stages	Number	Percent
A. Investigation		
Withdrawal w/o Settlement/ No Jurisdiction	295	14.1
Settlement	164	7.9
No Probable Cause	1238	59.4
Probable Cause	389	18.6
Total	2086	100.0
B. No Probable Cause Findings		
Appealed	342	28.2
Not Appealed	869	71.8
Total	1211	100.0
C. Conciliation		
Conciliation Waived	94	26.8
Conciliation Unsuccessful	214	61.0
Conciliation Successful	43	12.2
Total	351	100.0
D. Hearing Examiner		
Withdrawal w/o Settlement/ No Jurisdiction	141	28.5
Settlement	72	14.5
No Discrimination	106	21.4
No Probable Cause	96	19.4
Discrimination	51	10.3
Remanded	29	5.9
Total	495	100.0
E. LIRC Appeal		
Decision Reversed	37	27.2
Decision Revised	26	19.1
Decision Affirmed	73	53.7
Total	136	100.0

complainants who proceeded to the hearing examiner stage experienced little success, with a finding of discrimination in 10.3 percent of the cases and settlement in 14.5 percent. On appeal, the majority of hearing examiner decisions were affirmed (53.7 percent). This employer success rate may support the proposition that frequent litigators (employers) have advantages over less frequent litigators (workers) (Galanter, 1979).

Cross-Tabulations and Chi-Squares

Through the use of cross-tabulations and associated chi-squares, significant relationships were found between many variables. Table 28 provides a summary of the relationship of the four independent variables, and their impact on complaint outcome. Complaint outcome for the present purpose is defined as determinations made at the initial investigation stage.

This section also reports on the relationships among the independent variables, with their effect summarized in Table 28. In addition, Table 28 includes the relationships among the complaint processing stages. It must be noted that the significance of many of these relationships may be a function of the large sample size. As a result, in addition to its descriptive function, their cross-tabulation serves primarily to identify those variables appropriate for introduction into the more sophisticated log-linear analysis.

As predicted, while non-whites bring just 36.2 percent of all claims, at the investigation stage they received 44 percent of all PC findings, and 51 percent of the settlements (X^2 =

Table 28

Cross Tabulations

Variables	N	Chi-Square*	Probability
1. Age x Race	2553	9.02	.0110
2. Age x Personnel Action	2553	42.24	.0001
3. Age x Industry	2553	89.17	.0001
4. Race x Personnel Action	2553	14.50	.0128
5. Race x Industry	2553	290.12	.0001
6. Industry x Personnel Action	2553	429.84	.0001
7. Age x Investigation	2086	49.36	.0001
8. Race x Investigation	2074	32.91	.0001
9. Personnel Action x Investigation	2086	83.15	.0001
10. Industry x Investigation	2086	270.82	.0001
11. No Probable Cause x Hearing Examiners	214	------	-----
12. Conciliation x Hearing Examiners	133	47.21	.0001
13. Hearing Examiners x LIRC Appeal	134	95.18	.0001

*Expected number in cells meets strict requirements for all chi-square tests listed.

32.91; p = .0001). It may be that the claims of non-whites, with the added spectre of Title VII-type protection, are afforded greater credence, both by the employer and the agency.

At the investigation stage, workers in the 60 and above age group fared better than the younger members of the 40-70 bracket (X^2 = 49.36; p = .0001). This supports the earlier hypothesis.

While 70 percent of the claims from workers 40-49 received a NPC finding, and 57 percent for those 50-59, the oldest group suffered a NPC finding in only 49.4 percent of their claims. At the same time, the 60 and above group received a PC finding in 23.7 percent of the claims, greater than the 40-49 (13.3 percent) and 50-59 (19.8 percent) groups. Thus, it would appear that those workers cited earlier as in greatest need of protection, the 50-59 age group, are receiving less protection than the oldest bracket members.

At the investigation stage, 43.9 percent and 9.9 percent of the claims involved discharge and failure to hire, respectively (X^2 = 83.15; p = .0001). Contrary to the predicted finding, those same personnel actions accounted for 49.1 percent (discharges) and 14.1 percent (hirings) of the PC findings. Yet, while conditions of employment complaints were 36.5 percent of all claims, the category received only 22.1 percent of the PC findings. It would appear that the actual loss or denial of employment is viewed more seriously than the loss or denial of the mere benefits associated with employment, to the disregard of management prerogatives.

Contrary to our hypothesis, public sector employers were responsible for a significant proportion of the PC findings (X^2 = 270.82; p = .0001). While public sector employees filed only 8.1 percent of the claims, they received 13.1 percent of all PC findings. It is interesting to note that as employers, labor unions received a NPC finding in 93.6 percent of the claims filed against them. Because of their unique position in the advocacy of employment rights, unions may be particularly careful to avoid discriminatory conduct.

Among those NPC findings from the investigation stage which are appealed to the hearing examiner (#13 in Table 28), 43.9 percent are affirmed, while no discrimination is found in another 8.9 percent. Less than 1 percent result in a finding of discrimination, with the remainder of the cases withdrawn.[11]

In those cases where conciliation proved unsuccessful, only 11.7 percent received a finding of discrimination from the hearing examiner ($X^2 = 47.21$; $p = .0001$). At the same time, those complainants who waived conciliation received a favorable finding of discrimination in 69.6 percent of the cases. This would indicate that when complainants forego conciliation, they do so with a fair expectation of success. If such is the case, employers may want to consider settling at this point.

However, the incentive to settle is lost in view of the experience of complaints at the LIRC appeal stage. Before the LIRC, 78.7 percent of the findings of discrimination were reversed. Similarly, there were no reversals of findings of no discrimination ($X^2 = 95.18$; $p = .0001$).

Selected Models to Explain Outcomes

Log linear analysis was applied to three combinations of two variable models.[12] In recognition of our earlier concern with the competition for employment opportunities between older workers and minorities, the discussion and results presented will focus on the variables of race, age, and personnel action. The results are reported in Table 29 through Table 31.

Table 29

Log Odds Of Receiving a No Probable Cause Outcome As a Function Of Race And Age

			Response Probabilities		Response Function (Log Odds) Compare to Probable Cause
Age	Race	Sample Size	No Probable Cause	Probable Cause	No Probable Cause
40-49	White	359	.861	.139	1.821
40-49	Non-white	147	.789	.211	1.319
50-59	White	503	.775	.225	1.238
50-59	Non-white	322	.686	.314	.783
Over 59	White	188	.707	.293	.883
Over 59	Non-white	100	.610	.390	.447

Age: $X^2 = 28.25$; $p = .0001$
Race: $X^2 = 14.73$; $p = .0001$

Table 29 indicates the log odds of a younger white complainant receiving a finding of no probable cause (NPC) versus one of probable cause (PC) are greater than those for any other category. This propensity to suffer NPC findings also held true for non-whites age 40-49. At the same time, all complainants age 59 and over experienced significantly greater success in receiving PC findings. In addition, non-whites age 50-59 enjoyed a higher likelihood of success than those white complainants age 50-59. These findings lend support to the hypothesis on both older members of the protected bracket and on the effect of being a "dual protected" complainant.

In Table 30, the model of age and the personnel action at issue is described, and in agreement with our hypothesis, four of the five categories most likely to suffer NPC findings were those complainants age 40-49. Similarly, complainants over 59

Table 30

Log Odds of Receiving a No Probable Cause Outcome as a Function of Age and Personnel Action

			Response Probabilities		Response Function (Log Odds) Compare to Probable Cause
Personnel Action	Age	Sample Size	No Probable Cause	Probable Cause	No Probable Cause
Compensation	40-49	21	.810	.190	1.447
Compensation	50-59	45	.711	.289	.901
Compensation	Over 59	21	.667	.333	.693
Conditions	40-49	234	.936	.0641	2.681
Conditions	50-59	291	.839	.161	1.647
Conditions	Over 59	88	.727	.272	.981
Discharge	40-49	174	.770	.230	1.209
Discharge	50-59	369	.715	.285	.922
Discharge	Over 59	143	.678	.322	.746
Hiring	40-49	46	.696	.304	.827
Hiring	50-59	87	.644	.356	.591
Hiring	Over 59	19	.474	.526	-.105
Promotion	40-49	19	.789	.211	1.321
Promotion	50-59	15	.333	.667	-.693
Promotion	Over 59	10	.500	.500	.000

Personnel Action: $X^2 = 52.81$; $p = .0001$
Age: $X^2 = 23.43$; $p = .0001$

experienced the greatest likelihood of success. In opposition to our hypothesis, as noted earlier, the less serious personnel action of compensation and conditions of employment generally suffered higher propensities of NPC findings.

When race and personnel action were modeled, as exhibited in Tabl 31, it is again seen that non-white complainants generally enjoy a greater likelihood of receiving PC findings. Across races, the more serious personnel actions of discharge and hiring prompted an increase propensity to receive PC findings.

Table 31

Log Odds of Receiving a No Probable Cause Outcome as a Function of Race and Personnel Action

			Response Probabilities		Response Function (Log Odds) Compare to Probable Cause
Personnel Action	Race	Sample Size	No Probable Cause	Probable Cause	No Probable Cause
Compensation	White	53	.755	.245	1.124
Compensation	Non-white	34	.676	.324	.738
Conditions	White	450	.904	.096	2.248
Conditions	Non-white	103	.736	.264	1.026
Discharge	White	421	.717	.283	.931
Discharge	Non-white	265	.728	.272	.986
Hiring	White	87	.655	.345	.642
Hiring	Non-white	65	.615	.385	.470
Promotion	White	20	.700	.300	.847
Promotion	Non-white	24	.458	.542	-.167

Personnel Action: X^2 = 48.51; p = .0001
Race: X^2 = 9.52; p = .002

Conclusions

The findings indicate that while whites file the vast majority of age discrimination in employment claims in Wisconsin, non-whites experience more success. This predominant use of the law by whites, however, raises the spectre of conflict between the goal of the age provisions and those of the Title VII-type provisions.

The most common personnel action at issue was discharge. Complainants were most successful when the claim involved the most serious personnel actions, termination or denial of employment. Overall, however, employers experienced considerably more success at every stage of the agency process.

Moreover, the process of conciliation and settlement, one of the prime reasons for the existence of agencies to deal with EEO claims, was notably unsuccessful at each stage of the complaint process. Indeed, it would appear that employers had slight incentive to settle. As complaints were processed up, employers experienced a greater proportion of success. While further study is required, the data presents the possibility that the aggrieved older worker in Wisconsin may find courtroom litigation, despite its cost in time and money, an attractive alternative. If this is true, the Wisconsin law is not fulfilling its deferral role.

NOTES

1. Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621 et seq. as amended (1986)

2. See *BNA's Employee Relations Weekly*, Vol. 3, No. 11, pg. 333 (Bureau of National Affairs: Washington, D.C., 1985).

3. Id.

4. See 29 U.S.C. Sec. 633(b).

5. *Oscar Mayer and Co. v. Evans*, 441 U.S. 750 (1979).

6. See 29 C.F.R. 1626.10 which lists the deferral states. These states are identified by the EEOC as having a state law and agency that can effectively carry out the legislative objective of the ADEA.

7. 42 U.S.C. Section 2000e et seq.

8. Wisconsin Statutes, Chapter 111.31 et seq, as amended (1981).

9. Id. at 111.37(1).

10. The WERD is an agency of the Wisconsin Department of Labor and Human Relations.

11. Since only those appealed were cross-tabulated, the matrix provided no Chi-square.

12. Due to empty cells, only two-variable models could be used. For similar reasons, the industry variable could not be included in this stage of the analysis.

CHAPTER EIGHT

THE FILING AND OUTCOME OF STATE AGE DISCRIMINATION EMPLOYMENT COMPLAINTS: THE ILLINOIS EXPERIENCE

This chapter presents an empirical analysis of factors associated with the filing and outcome of age discrimination complaints brought under the Illinois Human Rights Acts.[1] The analysis will focus on personal and workplace characteristics associated with the filing of age discrimination complaints. The results are presented through the use of frequency distributions, cross-tabulations and chi-square tests. Significant relationships were found among several variables.

The Illinois Human Rights Act

Employment discrimination is prohibited in a provision of the Illinois Human Rights Act (HRA) which became effective July 1, 1980.[2] The HRA which applies to employers with fifteen or more employees, to labor organizations and to employment agencies makes it an unlawful discriminatory practice to use age as a factor in employment decisions for individuals between the ages of 40 to 70. Similar to the ADEA, the provision covers all terms and conditions of compensation, tenure, discharge, discipline and privileges.

The HRA is enforced by the Illinois Department of Human Rights (DHR) which was created under the HRA. The Department of Human Rights is considered a deferral agency by the EEOC, and thus responsible for employment discrimination claims with ADEA status.[3]

The DHR is authorized to receive age discrimination complaints for the purpose of determining their merit. The Department maintains a staff of attorneys and investigators with the responsibility of seeking the conciliation and adjustment of meritorious grievances.

Complaints filed with the DHR can be subject to several stages of processing.[4] Upon receiving a complaint, the DHR conducts an investigation and issues a report. If the report finds no substantial evidence of illegal discrimination, the complaint is dismissed. This dismissal may be appealed to the Illinois Human Rights Commission (HRC).

If substantial evidence of a violation is found, conciliation and settlement is attempted. If attempted settlement fails, the DHR issues a complaint with the HRC, seeking relief, and a public hearing is then held before a hearing officer. The hearing officer will make a recommended decision and order to the HRC, which will then review the recommendation and adopt, in part or whole, or reject the decision and order. The final orders of the HRC are reviewable in the state court.

Hypothesis

As a result of the novelty of the study, little research exists on identifying factors which may predict whether an individual worker will experience success when filing an ADEA complaint. Schuster and Miller (1986) concluded from an analysis of ADEA claims resolved in federal courts, that the sex of the complainant influences case outcome. Specifically, the research found women to be more successful as litigants in ADEA cases. The authors suggested that the added protection afforded women under Title VII, even when not asserted, may be influencing in a positive manner the treatment of women as ADEA complaints.

It can also be expected that an employee who suffers an adverse personnel decision through a highly structured personnel system, such as civil service, will be less able to attack the decision as arbitrary. Thus, public sector employees should receive fewer probable cause findings than various private sector employees.

As in the case in all employment discrimination litigation, there is a deference to an employer's right to hire, fire, promote or otherwise manage employees as it so wishes. This regard for management prerogatives can be expected to be particularly strong where the personnel action is of great significance, such as discharge or early retirement (Schuster & Miller, 1986). At the same time, the decision-maker in the complaint process will find it less intrusive to force an employer's hand in matters such as promotions, transfers and compensation. As a result, it is asserted here that the more severe the personnel action, the less likely complainants will experience success.

Methodology

The data source for this study was a computer printout listing age discrimination in employment complaints filed with the Department of Human Rights during fiscal years 1981-1986. The data set initially contained 2999 observations. Active cases were deleted from the data set thus leaving 478 closed complaints.

The listing provided information on the following variables: complainant's sex, type of respondent, disputed personnel action and complaint outcome. In order to permit a useful and manageable statistical analysis, categories for several variables were collapsed or deleted.

The variable type of respondent was constructed by combining state and local government into "government" and colleges/universities and elementary and secondary schools into "educational institutions." The personnel action variable was constructed by including discharge, termination and layoff in the "termination" category and grouping wages and benefits, seniority, training and other terms and conditions of employment as "compensation/conditions of employment." In the outcome variable, the category of "settlement" includes private settlement and those cases that were adjusted and withdrawn with a no fault finding. Cases that were dismissed because of either lack of jurisdiction or administrative closing were omitted from this variable.

Results and Analysis

Frequencies

As shown in Table 32, age discrimination complainants under the Illinois Human Rights Act have been predominantly male (58.3 percent). Although this data set did not contain race information, previous research has established that age discrimination complainants are generally white males (Schuster & Miller, 1984b). As expected, the vast majority (91.3 percent) of claims came from private employers.

Table 32

Frequencies and Percentages of Complaint Characteristics

	Frequency	Percentage
A. Sex (N=472)		
Male	275	58.3
Female	197	41.7
B. Type of Respondent (N=311)		
Private Employer	284	91.3
Government	17	5.5
Educational Institution	10	3.2
C. Personnel Action (N=478)		
Termination	319	66.7
Compensation/Conditions of Employment	97	20.3
Hiring	36	7.5
Promotion/Demotion	26	5.5
D. Outcome (N=361)		
Settlement	184	51.0
No Probable Cause	170	47.1
Probable Cause	7	1.9

Previous research concerning federal court actions under the ADEA showed that the majority of claims were prompted by the personnel actions of discharge or involuntary retirement (Schuster & Miller, 1986). From Table 32, it can be seen that the Illinois analysis produced similar results, where termination was the challenged personnel action in 66.7 percent of the cases. Older workers may tolerate less severe forms of age-based employment discrimination, and publicly address their grievances only when separation occurs.

Table 32 also reports on the outcome of complaints filed under the Human Rights Act. Among all cases, a finding of "no probable cause" of discriminatory conduct occurred 47.1 percent of the time. In only 1.9 percent of the cases was there substantial evidence resulted in a probable cause finding. The high employer success rate is consistent with previous research (Schuster & Miller, 1986).

This employer success rate may support Galanter's proposition that frequent litigators have advantages over less frequent litigators (Galanter, 1979). Thus, employing Galanter's taxonomy, the employee-complainant may be considered a "one-shotter," and the employer-defendant a "repeat-player." Because of their position and greater expertise, repeat-players are expected to "settle" weaker cases and litigate stronger cases. It might be expected that employees have a more favorable prelitigation success rate. In fact, this last proposition draws some support from the results which indicate that settlement occurred in 51.0 percent of the cases. Settlement can reasonably be interpreted as containing some measure of success for the complainant.

Cross-Tabulations and Chi-Squares

Using cross-tabulations and associated chi-squares, significant relationships were found between several variables. Table 33 provides a summary of the relationships between the independent variables and their impact on complaint outcome.

As hypothesized, complainants were least successful when the personnel actions involved some form of termination ($X^2 = 5.668$, $p = 0.059$). Specifically, where termination was the disputed action, 52 percent of the cases resulted in no probable cause findings, while only 2 percent resulted in probable cause findings and 46 percent received a settlement. In contrast, in non-termination (hiring, promotion/demotion, compensation/conditions of employment) cases, 39 percent of the complainants received no probable cause findings and 60 percent received a settlement. Thus, as the personnel action lessens in severity, the more successful complainants are.

Three explanations are offered. First, employers may be more attentive to personnel actions involving termination and therefore better prepared to defend them. Second, an employer's vested interest in terminations could be viewed as heavier than in other job status-type actions, with the result that the former personnel actions receive a more fervent defense. Third, the state agency may be less willing to intrude on traditionally core management prerogative, such as the right to dismiss.

There did not appear to be an effect of gender (X^2 = 1.764, p = 0.414) on the outcome of cases. While not statistically significant, it should be noted that although males filed 58 percent of the complaints, they received 71 percent of the probable cause findings. Among all males, 50 percent suffered no probable cause and 2 percent enjoyed probable cause finding, while 44 percent of females received no probable cause findings and only 1 percent managed probable cause findings.

Table 33

Selected Cross-Tabulations of Complaint Characteristics and Outcome

Variables	N	Chi-Square	Probability
Outcome X Sex	356	1.764	0.414
Outcome X Personnel Action	361	5.668	0.059*
Outcome X Type of Respondent	250	1.433	0.838
Sex X Personnel Action	472	5.051	0.025**
Sex X Type of Respondent	307	4.023	0.134
Type of Respondent X Personnel Action	311	5.903	0.052*

*$p \leq .10$ **$p \leq .05$

Three possible explanations are offered for this sex difference. First, females with strong claims of employment discrimination may prefer pursuing their complaint as sex-based, rather than age-based, leaving the more marginal claims for age discrimination. Second, the age discrimination provision has essentially become the only channel through which white males may challenge discriminatory conduct. As a result, male plaintiffs with meritorious claims are heavily represented in the population of age complaints. Third, the employment status of men may be viewed with more concern due to their traditional role as family supporter.

There was a significant relationship between sex and the challenged personnel action ($X^2 = 5.051$, $p = 0.025$). Termination was more an issue among male complainants than females. Seventy-one percent of males charged illegal termination, compared to 61 percent of the females.

The type of respondent did not appear to have an impact on complaint outcome ($X^2 = 1.433$, $p = 0.838$). Although not significant, as expected, public sector employees received only 14 percent of the probable cause findings. One explanation for this finding is that an employee who suffers an adverse personnel decision in a highly structured personnel system, such as civil service, will be less able to attack the decision as arbitrary. Therefore, public sector employees will receive fewer probable cause findings than various private sector workers.

There was a significant relationship between type of respondent and the personnel action at issue ($X^2 = 5.903$, $p = 0.052$). Private sector employees brought 94 percent of the cases involving termination. It is not surprising that given the job security of public sector employees they are more concerned with job status issues rather than discharge actions.

Conclusions

The results reported indicate the Illinois Human Rights Act has become the primary device for males in redressing arbitrary personnel decisions. This finding is consistent with the analysis of the ADEA in federal court, and serves to create a potential conflict between the employment rights of older workers and those of workers protected by Title VII.

The majority of the complaints were prompted by termination. However, complainants were more successful in cases involving less severe personnel actions such as hiring, promotion or compensation than in complaints involving some form of termination. It can be hypothesized that employers are more attentive to complaints involving termination and therefore better prepared to defend them. Neither the sex of the complainant nor type of respondent appeared to have an impact on case outcome.

The results indicate that approximately half of the complaints ended in a settlement. This could reasonably be interpreted as containing some measure of success for the complainant. A further research issue would be to qualitatively examine the extent to which complainants benefitted from a settlement agreement.

NOTES

1. Illinois Rev. Stat., Ch. 68, Sections 1-101 *et.seq.* as amended (1985).

2. *Id.*

3. The ADEA requires that, in states that have a law prohibiting age discrimination in employment, complainants first must file under the state law. 29 U.S.C. § 633(b) (1982). Section 633(b) provides in relevant part:

> In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626i of this title before the under expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated.
>
> *Id.*

4. Illinois Rev. Stat. Ch. 68, Sections 7 and 8.

CHAPTER NINE

THE FILING AND OUTCOME OF STATE AGE DISCRIMINATION COMPLAINTS: THE NEW JERSEY EXPERIENCE

This chapter presents an empirical analysis of factors associated with the filing and outcome of age discrimination complaints brought under the New Jersey Law Against Discrimination.[1] The analysis will focus on personal and workplace characteristics associated with the filing of ADEA complaints. The results are presented through the use of frequency distributions, cross-tabulations and chi-square tests. Significant relations were found among several variables.

The New Jersey Law Against Discrimination

The New Jersey Law Against Discrimination (LAD) prohibits job discrimination on the basis of age and applies to all employers.[2] The LAD is enforced by the Division on Civil Rights (DCR), consisting of the State Attorney General and a seven-member commission. The Division on Civil Rights is considered a deferral agency by the EEOC, and thus responsible for employment discrimination claims with ADEA status.[3]

An individual may either file a complaint with the DCR or in state Superior Court. If filed with the DCR, the complaint is investigated by the Attorney General. If probable cause is found, the Attorney General seeks to remedy the discrimination by conference, conciliation, and persuasion. Where these methods do not result in resolution, a public hearing is then held before an administrative law judge. If the Director finds illegal discrimination, an order requiring the employer to cease and desist from the illegal discrimination and to remedy any damages is issued. This order may be appealed to the Superior Court, Appellate Division.

Where the DCR has made a no probable cause finding, the complainant may request a public hearing before an administrative law judge.

Hypothesis

As a result of the novelty of the study, little research exists on identifying factors which may predict whether an individual worker will experience success when filing an ADEA complaint. Schuster and Miller (1986) concluded from an analysis of ADEA claims resolved in federal courts, that the sex of the complainant influences case outcome. Specifically, the research found women to be more successful as litigants in ADEA cases. The authors suggested that the added protection afforded women under Title VII, even when not asserted, may be influencing in a positive manner the treatment of women as ADEA complaints.

It can also be expected that an employee who suffers an adverse personnel decision through a highly structured personnel system, such as civil service, will be less able to attack the decision as arbitrary. Thus, public sector employees should receive fewer probable findings than various private sector employees.

As in the case in all employment discrimination litigation, there is a deference to an employer's right to hire, fire, promote or otherwise manage employees as it so wishes. This regard for management prerogatives can be expected to be particularly strong where the personnel action is of great significance, such as discharge, or early retirement (Schuster & Miller, 1986). At the same time, the decision-maker in the complaint process will find it less intrusive to force an employer's hand in matters such as promotions, transfers and compensation. As a result, it is asserted here that the more severe the personnel action, the less likely complainants will experience success.

Methodology

The data source for this study was a computer printout listing age discrimination in employment cases closed by Division on Civil Rights from May, 1983 to November, 1986. The data set contained 341 ADEA cases.

The listing provided information on the following variables: sex of the complainant, industry of the respondent, disputed personnel action and complaint outcome. In order to provide a useful and manageable statistical analysis, categories for several variables were collapsed or deleted.

The personnel action variable was constructed by including discharge, constructive discharge and layoff/suspension in the "termination" category and grouping differential treatment/pay, sexual harassment and other terms and conditions of employment as "compensation/conditions of employment." In the outcome variable, the category "probable cause" includes cases that were closed according to (1) hearing and order and (2) consent order and decree. Cases that were dismissed because of either lack of jurisdiction or administrative closing were omitted from this variable.

Results and Analysis

Frequencies

As shown in Table 34, the majority of age discrimination complainants under the New Jersey Law Against Discrimination have been male (54.5 percent). Although this data set did not contain race information, previous research has established that age discrimination complainants are generally white males (Schuster & Miller, 1986). Among industries, manufacturing (41.8 percent) and service concerns (39.7 percent) attracted the majority of complaints.

Previous research concerning federal court actions under the ADEA showed that the majority of claims were prompted by the personnel actions of discharge or involuntary retirement (Schuster & Miller, 1986). From Table 34, it can be seen the New

Table 34

Frequencies and Percentages of Complaint Characteristics

	Frequency	Percentage
A. Sex (N=325)		
Male	177	54.5
Female	148	45.5
B. Industry (N=232)		
Manufacturing	97	41.8
Service	92	39.7
Retail	23	9.9
Government	20	8.6
C. Personnel Action (N=341)		
Termination	236	69.2
Hiring	46	13.5
Compensation/Conditions of Employment	34	9.7
Promotion/Demotion	26	7.6
D. Outcome (N=136)		
No Probable Cause	128	94.1
Probable Cause	8	5.9

Jersey analysis produced similar results, where termination was the challenged personnel action in 69.2 percent of the cases. Older workers may tolerate less severe forms of age-based employment discrimination, and publicly address their grievances only when separation occurs.

Table 34 also reports on the outcome of complaints filed under the New Jersey Law Against Discrimination. Among all cases, a finding of "no probable cause" of discriminatory conduct occurred 94.1 percent of the time. This high employer success rate is consistent with previous research (Schuster & Miller, 1986) and may support Galanter's proposition that frequent litigators have advantages over less frequent litigators (Galanter, 1979). Thus, employing Galanter's taxonomy, the employee-complainant may be considered a "one-shotter," and the employer-defendant a "repeat-player." Because of their position and greater expertise, repeat-players are expected to "settle" weaker cases and litigate stronger cases. It might be expected that employees have a more favorable prelitigation success rate.

In fact, this last proposition draws some support from the results which indicate that settlement occurred in 51.0 percent of the cases. Settlement can reasonably be interpreted as containing some measure of success for the complainant.

Cross-Tabulations and Chi-Squares

Through the use of cross-tabulations and associated chi-squares, significant relationships were found between several variables. Table 35 provides a summary of the relationships between the independent variables and their impact on complaint outcome.

There did not appear to be an effect of personnel action ($X^2 = 1.890$, $p = 0.169$) on complaint outcome. Across non-termination (hiring, promotion/demotion, compensation/conditions of employment) cases, 10 percent of complainants received a probable cause finding compared with 4 percent of the termination cases ending successfully for the complainant. Interestingly, although non-termination actions accounted for only 30.8 percent of the cases, they received 50 percent of the probable cause findings. Therefore, although not statistically significant, as the personnel action lessens in severity, the more successful the complainants are.

Table 35

Selected Cross-Tabulations of Complaint Characteristics and Outcome

Variables	N	Chi-Square	Probability
Outcome X Sex	127	6.296	0.012**
Outcome X Industry	91	1.139	0.768
Outcome X Personnel Action	136	1.890	0.169
Sex X Industry	221	16.415	0.001**
Sex X Personnel Action	325	0.069	0.793
Industry X Personnel Action	232	6.860	0.077*

*$p \leq .10$ **$p \leq .05$

As hypothesized, females seem to experience significantly greater success than males when filing age discrimination complaints ($X^2 = 6.296$, $p = 0.012$). While males filed 54.5 percent of the complaints, they only received 12.5 percent of the probable cause findings. Among all males, 98.6 percent suffered no probable cause while 87.7 percent of females received no probable cause findings. Thus females appear to experience greater success in ADEA complaints then do males. One possible explanation is that the added protection afforded women under

Title VII, even when not asserted, may be influencing in a positive manner the treatment of women as ADEA complainants.

There did not appear to be a statistically significant relationship between sex of the complainant and the challenged personnel action ($X^2 = .069$, $p = .793$). Termination was equally an issue for male complainants as for female complainants with approximately 70 percent of each sex charging illegal termination.

The industry of the respondent did not appear to have an impact on case outcome ($X^2 = 1.139$, $p = .768$). Interestingly, although public sector employees accounted for only 8.6 percent of all cases, they received 20 percent of the probable cause findings. Individuals employed in manufacturing or service concerns accounted for 81.5 percent of all cases but received only 40 percent of the probable cause findings. These results are contrary to the hypothesis that public sector employees should receive fewer probable cause findings than various private sector employees.

Additionally, there was a significant relationship found between industry and sex of the complainant ($X^2 = 16.415$, $p = .001$). Across females, 62.3 percent were employed in a retail or service organization. In contrast, across males, the majority (54.5 percent) were employed in a manufacturing concern. One possible explanation for this result is the traditional placement of women in the job market as sales or clerical workers.

Conclusions

The results reported indicate the New Jersey Law Against Discrimination has become the primary device for males in redressing arbitrary personnel decisions. This finding is consistent with the experience of the ADEA in federal court, and serves to create a potential conflict between the employment rights of older workers and those of workers protected under Title VII-type legislation. While the majority of complaints were filed by males, females experienced significantly greater success in these cases than males. It may be that the added protection afforded women under Title VII, even when not asserted, may be influencing in a positive manner the treatment of women in ADEA complaints.

The majority of the complaints were prompted by termination. The personnel action did not appear to have a statistically significant impact on case outcome. However, non-termination actions accounted for approximately one third of the cases but received one half of the probable cause findings.

Among industries, manufacturing and service organizations attracted the majority of complaints. The industry of the respondent was not found to have an effect on case outcome. However, significant relationships were found between industry and the personnel action and between industry and the sex of the complainant. First, the majority of cases involving a termination issue were brought by a private sector employee. Second, females tended to be employed in either a retail or service organization while the majority of males worked in a manufacturing concern.

An important point is that approximately forty percent of the total complaints resulted in an agency determination. The remainder were dismissed due to either administrative closing or lack of jurisdiction by the Division on Civil Rights. Only six percent of those cases receiving a determination ended successfully for the complainant (i.e. a probable cause finding). Therefore, it does not appear that age discrimination complainants are experiencing much success in these state proceedings. Future research is needed to determine if the objectives of the ADEA are being fulfilled at the state level.

NOTES

1. New Jersey Rev. Stat. Title 10, Ch. 5, Sections 10: 5-1 *et seq.* as amended (1985).

2. *Id.*

3. The ADEA requires that, in states that have a law prohibiting age discrimination in employment, complainants first must file under the state law. 29 U.S.C. § 633(b) (1982). Section 633(b) provides in relevant part:

> In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626i of this title before the under expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated.

Id.

CHAPTER TEN

THE FILING AND OUTCOME OF STATE AGE DISCRIMINATION COMPLAINTS: THE NEBRASKA EXPERIENCE

This chapter presents an empirical analysis of factors associated with the filing and outcome of age discrimination complaints brought under the Nebraska Act Prohibiting Unjust Discrimination in Employment Because of Age.[1] The analysis will focus on personal and workplace characteristics associated with the filing of age discrimination complaints. The results are presented through the use of frequency distributions, cross-tabulations and chi-square tests. Significant relationships were found among several variables.

The Nebraska Age Discrimination Law

Nebraska prohibits job discrimination based on age in its Act Prohibiting Unjust Discrimination in Employment Because of Age.[2] The Act applies to employers, with 25 or more employees and includes state governmental agencies regardless of the number of employees. The prohibitions are limited to the employment of individuals between the ages of 40 and 70.

The Act is enforced by the Nebraska Equal Opportunity Commission (NEOC) established under the Nebraska Fair Employment Practices Act.[3] The Equal Opportunity Commission is considered a deferral agency by the Federal EEOC and thus responsible for employment claims with ADEA status.[4]

The NEOC investigates all complaints. If no reasonable cause is found, the complaint is dismissed. If reasonable cause is found, the NEOC may bring a civil suit in its name. The NEOC cannot attempt settlement without the consent of the complainant during the investigation stage.

Hypothesis

As a result of the novelty of the study, little research exists on identifying factors which may predict whether an individual worker will experience success when filing an ADEA complaint. Schuster and Miller (1986) concluded from an analysis of ADEA claims resolved in federal courts, that the sex of the complainant influences case outcome. Specifically, the research found women to be more successful as litigants in ADEA cases. The authors suggested that the added protection afforded women under Title VII, even when not asserted, may be influencing in a positive manner the treatment of women as ADEA complaints.

This same logic extends to the race of age discrimination complaints. It can be expected that older, nonwhites, enjoying the dual protection of Title VII and the ADEA, will have the merits of their claims examined on a more favorable basis. This should remain true even where race discrimination is not alleged, because the spectre of Title VII protection remains throughout the proceedings.

While age discrimination legislation seeks to protect older workers, the protective bracket during the time period studied of both the federal ADEA and the Nebraska statute span 30 years. Since it is clear that the impact of negative personnel actions increases as a worker ages (Boglietti, 1974; Rosenblum, 1975), a 40-year-old complainant may not necessarily be viewed in a manner equivalent to that of a 60-year-old complainant. Assuming that this progression is not lost on decision-makers in the age discrimination complaint process, complainants in the upper bounds of the age bracket can be expected to experience more success in case outcomes.

In light of the special nature of state agency proceedings, where complaints often proceed without representation by Counsel, it is suggested here that the complainant's occupation will influence case outcome. Those workers which fall into a management or professional employment category, can be thought to be better suited for the organization of information and the assertion of arguments demanded by the complaint process. Thus, white collar workers should succeed more often than other occupational categories.

As in the case in all employment discrimination litigation, there is a deference to an employer's right to hire, fire, promote or otherwise manage employees as it so wishes. This regard for management prerogatives can be expected to be particularly strong where the personnel action is of great significance, such as discharge, or early retirement (Schuster &

Miller, 1986). At the same time, the decision-maker in the complaint process will find it less intrusive to force an employer's hand in matters such as promotions, transfers, and compensation. As a result, it is asserted here that the more severe the personnel action, the less likely complainants will experience success.

Methodology

The data source for this study were copies of the charges of employment discrimination filed with the Nebraska Equal Opportunity Commission and the accompanying Commission's determination with the complainant's name and address and the respondent's name omitted. The data set consisted of 273 ADEA cases closed from April, 1980 to October, 1983.

These documents provided information on the following variables: sex, race, age and occupation of the complainant, disputed personnel action and complaint outcome. In order to permit a useful and manageable statistical analysis, categories for several variables were collapsed or deleted.

The personnel action variable was constructed by including discharge, forced retirement and layoff in the "termination" category and grouping wages/benefits, retaliation, harassment and other terms and conditions of employment as "compensation/conditions of employment." The outcome variable omitted cases that were dismissed because of either lack of jurisdiction or administrative closing.

Results and Analysis

Frequencies

As shown in Table 36, age discrimination complainants under the Nebraska statute have been predominantly male (60.5 percent). The vast majority of complainants have also been white (82.3 percent). This is consistent with previous research which found that age discrimination complainants are generally white males (Schuster & Miller, 1986). It may be that women and non-whites are more likely to charge sex or race discrimination, historically viewed as more invidious than age discrimination (Blumrosen, 1982). Moreover, it may be that age discrimination legislation provides the only recourse for older, white males who believe they have unfairly suffered an adverse personnel action (Schuster & Miller, 1986).

Among all complainants, 49.8 percent have been between the ages of 50-59. Thus it would appear that the Nebraska age statute is receiving the most attention from those employees likely to be in greatest need of protection. That is, those older workers who: (1) have reached the end of their career path with a particular organization, (2) are priced higher than younger workers, (3) would find it difficult to start over, and (4) are not yet close enough to the security of retirement benefits. This is particularly important in light of research concluding that workers in the 55 and over age group have the highest rate of discouraged workers of any group (Rosenblum, 1975) and the general finding that the risk of long-term unemployment increases significantly for non-working males reaching the age of 50 (Boglietti, 1974).

In contrast to ADEA claims brought in the federal courts (Schuster & Miller, 1984a), most complainants in the state actions were not professional or managerial employees. Blue collar employees filed the most complaints (43.0 percent), while professionals or managers were involved in 30.3 percent of the cases. The reduced costs of pursuing a state claim may be more accommodating to lower wage earners, facilitating their redress of grievances.

Previous research concerning federal court actions under the ADEA showed that the majority of claims were prompted by the personnel actions of discharge or involuntary retirement (Schuster & Miller, 1986). From Table 36, it can be seen that the Nebraska analysis produced similar results, where termination was the challenged personnel action in 66.3 percent of the cases. Older workers may tolerate less severe forms of age-based employment discrimination, and publicly address their grievances only when separation occurs.

Table 36 also reports on the outcome of complaints filed under the Nebraska age discrimination law. Among all cases, a finding of no probable cause of discriminatory conduct occurred 81.1 percent of the time. There was only one complaint which resulted in a probable cause finding. The Nebraska Equal Opportunity Commission based their decision on evidence which included (a) a verbal statement by the supervisor in a meeting

Table 36

Frequencies and Percentages of Complaint Characteristics

	Frequency	Percentage
A. Sex (N=190)		
Male	115	60.5
Female	75	39.5
B. Age group (N=273)		
40-49	72	26.4
50-59	136	49.8
60-70	65	23.8
C. Race (N=96)		
White	79	82.3
Non-white	17	17.7
D. Occupation (N=244)		
Blue Collar	105	43.0
Professional/Managerial	74	30.3
Clerical	35	14.3
Retail	30	12.3
E. Personnel Action (N=273)		
Termination	181	66.3
Hiring	45	16.5
Promotion/Demotion	24	8.8
Compensation/Conditions of Employment	23	8.5
F. Outcome (N=228)		
No Probable Cause	185	81.1
Probable Cause	1	0.4
Settlement	42	18.4

that the complainant was being replaced with a younger individual, (b) the hiring of a younger individual and (c) the termination of ten employees in the protected age bracket during a fifteen month period. Thus, only direct evidence resulted in a probable cause finding. Although it is apparent the employers have consistently mounted successful defenses, the results also indicated that settlement occurred in 18.4 percent of the complaints. Settlement can reasonably be interpreted as containing some measure of success for the complainant.

Cross-Tabulations and Chi-Squares

Through the use of cross-tabulations and associated chi-squares, significant relationships were found between several variables. Table 37 provides a summary of the relationships between the variables and their impact on complaint outcome.

There did not appear to be an impact of personnel action on complaint outcome ($X^2 = 1.021$, $p = 0.600$). Across non-termination (hiring, promotion/demotion, compensation/conditions of employment) cases, 21 percent of the cases resulted in a settlement. Similarly, across termination cases, 17 percent of the complainants received a settlement plus one case (.4 percent) resulted in a probable cause finding. Therefore, it did not appear that the severity of the challenged personnel action is related to complainant success.

As hypothesized, females seem to experience significantly greater success than males when filing age discrimination complaints ($X^2 = 13.151$, $p = .001$). Although males filed 60.5

percent of the complaints, they received only 32 percent of the settlements and the only probable cause finding. Among all

Table 37

Selected Cross-Tabulations of Complaint Characteristics and Outcome

Variables	N	Chi-Square	Probability
Outcome X Sex	160	13.151	0.001**
Outcome X Age Group	228	4.186	0.381
Outcome X Race	84	0.449	0.799
Outcome X Occupation	203	5.528	0.478
Outcome X Personnel Action	228	1.021	0.600
Sex X Age Group	190	0.346	0.841
Sex X Race	94	5.048	0.025*
Sex X Occupation	173	30.033	<0.001**
Sex X Personnel Action	190	0.025	0.875
Age Group X Race	96	6.904	0.032*
Age Group X Occupation	244	6.387	0.381
Age Group X Personnel Action	273	0.738	0.691
Race X Occupation	84	4.888	0.180
Race X Personnel Action	96	8.023	0.005**
Occupation X Personnel Action	244	3.022	0.388

*$p \leq .05$ **$p \leq .01$

males, 89.9 percent suffered no probable cause findings while 68.9 percent of females received no probable cause findings. Thus, females appear to experience greater success in ADEA complaints than do males. One possible explanation, is that the added protection afforded women under Title VII, even when not asserted, may be influencing in a positive manner the treatment of women as ADEA complainants.

There did not appear to be a statistical impact of race of the complainant on outcome ($X^2 = 0.449$, $p = 0.779$). White complainants filed 82.3 percent of the cases and suffered 85.3 percent of the no probable cause findings. Likewise, non-white complainants filed 17.7 percent of the cases and received 14.7 percent of the no probable cause findings. It was hypothesized that nonwhite complainants would be more successful in these cases. Although not statistically significant, the results showed that cases brought by nonwhite individuals slightly tended to end more successfully for the complainant.

It was expected that older members of the protected age bracket would fare better than younger bracket members. However, there does not appear to be support for that hypothesis ($X^2 = 4.186$, $p = .381$). The 40-49 age group, filed 26.4 percent of all complaints, but received only 22.7 percent of the no probable cause findings. At the same time, the 50-59 age group filed 49.8 percent of the complaints, but received 50.3 percent of the no probable cause findings. Those individuals in the 60-70 age group filed 23.8 percent of the complaints and suffered 27.0 percent of the no probable cause findings. Thus it seems that those workers who are in the greatest need of protection, over age 50, are in fact failing in these claims most often.

It was also hypothesized that professional/managerial employees would succeed more often than other occupational groups. However, there does not appear to be support for this hypothesis ($X^2 = 5.528$, $p = 0.478$). Each of the occupational groups received approximately the same percentage of no probable cause findings as the percentage of total cases filed. For example, professional/managerial employees filed 30.3 percent of the cases and received 34.0 percent of the no probable cause findings. Therefore, it does not appear that the occupation of the complainant has any impact on case outcome.

There were significant relationships between sex and race of complainants ($X^2 = 5.048$, $p = 0.025$) and between sex and occupation of the complainants ($X^2 = 30.033$, $p < .001$). Previous research found that age discrimination complainants are generally white males (Schuster & Miller, 1986). Similar results indicate that 47.9 percent of complainants were white males, 35.1 percent were white females, 14.9 percent where non-white males and 2.1 percent were non-white females.

Additionally the sex of complainants differed significantly among occupational categories. The majority of complainants (32.4 percent) were blue collar males. Among females, 31.4 percent were blue collar workers, 30 percent were clerical workers, 27.1 percent were employed in a professional/managerial capacity and 11.4 percent were retail employees. In contrast, among males, 54.4 percent were blue collar workers, 33.0 percent professional/managerial employees, 10.7 percent retail workers and 1.9 percent clerical workers.

There were significant relationships between race and age group of the complainant ($X^2 = 6.904$, $p = 0.032$) and between race and personnel action ($X^2 = 8.023$, $p = .005$). The majority (49.0

percent) of all complainants were white and between the ages of 50 and 59. However, among only non-white complainants, the majority (47.1 percent) were between the ages of 40-49. Thus, it appears that non-white complainants are younger than white complainants.

There was a significant relationship between race and the challenged personnel action. Among whites, the predominant (76.0 percent) personnel action was termination. In contrast among non-whites, the majority (58.8 percent) of cases involved a non-termination issue. It appears then that non-whites are more likely to bring complaints involving less severe personnel actions than are white employees. One possible explanation is that non-whites are more aware of their legal employment protections than are white employees and therefore, legally challenge their employer's actions before termination.

Conclusions

The results reported indicate the Nebraska Act Prohibiting Unjust Discrimination in Employment Because of Age has become the primary device for white males in redressing arbitrary personnel decisions. This finding is consistent with the experience of the ADEA in federal court, and serves to create a potential conflict between the employment rights of older workers and those of workers protected under Title VII-type legislation. While the majority of complaints were filed by males, females experienced significantly greater success in these cases than males. it may be that the added protection afforded women under Title VII, even when not asserted, may be influencing in a positive manner the treatment of women in ADEA complaints.

The majority of complaints were brought by blue collar employees. The occupation of the complainant was not found to have an impact on case outcome. However, a significant relationship was found between sex and occupation of the complainant. The majority of all cases were brought by blue collar males. Almost one third of females were clerical employees, while only less than 2 percent of males were employed in a clerical capacity.

The majority of complaints were prompted by termination. The personnel action did not appear to have a statistically significant impact on case outcome. The only case to result in a probable cause finding involved the termination of the employee. The Nebraska Equal Opportunity Commission's determination was based on direct evidence of age discrimination.

NOTES

1. Nebraska Rev. Stat. Art. 10, Section 48-1001 et seq. (1986).

2. Id.

3. Nebraska Rev. Stat. Art. 10, Section 48-1007-1010; Art. 11, Section 48-1101-1126 (1986).

4. The ADEA requires that, in states that have a law prohibiting age discrimination in employment, complainants first must file under the state law. 29 U.S.C. § 633(b) (1982). Section 633(b) provides in relevant part:

> In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626i of this title before the under expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated.

Id.

CHAPTER ELEVEN

THE FILING AND OUTCOME OF STATE AGE DISCRIMINATION COMPLAINTS: THE CONNECTICUT EXPERIENCE

This chapter presents an empirical analysis of factors associated with the filing and outcome of age discrimination complaints brought under the Connecticut Human Rights and Opportunities Law.[1] The analysis will focus on personal and workplace characteristics associated with the filing of age discrimination complaints. The results are presented through the use of frequency distributions, cross-tabulations and chi-square tests. Significant relationships were found among several variables.

The Connecticut Human Rights and Opportunities Law

The Connecticut Human Rights and Opportunities Law (HROL) prohibits job discrimination on the basis of an individual's age.[2] The law applies to employers with at least three employees, state governmental agencies, employment agencies and labor organizations.

The HROL is enforced by the Commission on Human Rights and Opportunities (CHRO). The CHRO is considered a deferral agency by the Federal EEOC and thus responsible for employment claims with ADEA status.[3]

After the filing of a complaint, the CHRO conducts an investigation. If the investigation reveals reasonable cause to believe illegal discrimination occurred, conciliation is attempted. If this attempt fails, a complaint is filed with the chair of the CHRO and the State's Attorney General, which is then followed by a public hearing before a hearing officer.

If the hearing officer finds a violation, a remedial and cease and desist order is issued. This order, or an order of dismissal, can be enforced and appealed through the state court. Any CHRO dismissal of the complaint can be appealed to a state court.

Hypothesis

As a result of the novelty of the study, little research exists on identifying factors which may predict whether an individual worker will experience success when filing an ADEA complaint. Schuster and Miller (1986) concluded from an analysis of ADEA claims resolved in federal courts, that the sex of the complainant influences case outcome. Specifically, the research found women to be more successful as litigants in ADEA cases. The authors suggested that the added protection afforded women under Title VII, even when not asserted, may be influencing in a positive manner the treatment of women as ADEA complaints.

As is the case in all employment discrimination litigation, there is a deference to an employer's right to hire, fire, promote or otherwise manage employees as it so wishes. This regard for management prerogatives can be expected to be particularly strong where the personnel action is of great significance, such as discharge, or early retirement (Schuster & Miller, 1986). At the same time, the decision-maker in the complaint process will find it less intrusive to force an employer's hand in matters such as promotions, transfers, and compensation. As a result, it is asserted here that the more severe the personnel action, the less likely complainants will experience success.

It can also be expected that an employee who suffers an adverse personnel decision through a highly structured personnel system, such as civil service, will be less able to attack the decision as arbitrary. Thus, public sector employees should receive fewer probable cause findings than various private sector employees.

Methodology

The data source for this study was a computer printout listing all closed cases with an age allegation for fiscal years ending June 30, 1983 - 1986. The data set contained 1241 ADEA cases.

The listing provided information on the following variables: sex of the complainant, industry of the respondent, disputed personnel action and complaint outcome. In order to permit a useful and manageable statistical analysis, categories for several variables were collapsed or deleted.

The personnel action variable was constructed by including retaliation, sexual harassment and terms and conditions of employment in the "compensation/conditions of employment" category. In the outcome variable, the category "no probable cause" includes findings of lack of sufficient evidence and public hearing decisions that are not favorable to the complainant. The category "probable cause" includes public hearing decisions favorable to the complainant. The settlement category includes those cases satisfactorily adjusted between the parties, cases withdrawn with settlement and cases involving a predetermination settlement. Cases that were dismissed because of administrative closing were omitted from this variable.

Results and Analysis

Frequencies

As shown in Table 38, the majority of age discrimination complainants under the Connecticut Human Rights and Opportunities Law have been male. Although this data did not contain race information, previous research has established that age discrimination complainants are generally white males (Schuster & Miller, 1986). Among industries, manufacturing (33.6 percent) and service (32.4 percent) concerns attracted the majority of complaints.

TABLE 32

Frequencies and Percentages of Complaint Characteristics

	Frequency	Percentage
A. Sex (N=1192)		
Male	729	61.2
Female	463	38.8
B. Industry (N=853)		
Manufacturing	287	33.6
Service	276	32.4
Government	188	22.0
Retail	102	12.0
C. Personnel Action (N=1241)		
Termination	722	58.2
Compensation/Conditions of Employment	244	19.7
Hiring	173	13.9
Promotion/Demotion	102	8.2
F. Outcome (N=982)		
No Probable Cause	628	64.0
Probable Cause	3	0.3
Settlement	351	35.7

Previous research concerning federal court actions under the ADEA showed that the majority of claims were prompted by the personnel actions of discharge or involuntary retirement (Schuster & Miller, 1986). From Table 38, it can be seen that the Connecticut analysis produced similar results, where termination was the challenged personnel action in 58.2 percent of the cases. Older workers may tolerate less severe forms of age-based employment discrimination, and publicly address their grievances only when separation occurs.

Table 38 also reports on the outcome of complaints filed under the Connecticut Statute. Among all cases, a finding of no probable cause of discriminatory conduct occurred 64.0 percent of the time. The high employer success rate may support Galanter's proposition that frequent litigators have advantages over less frequent litigators (Galanter, 1979). Thus, employing Galanter's taxonomy, the employee-complainant may be considered a "one-shotter," and the employer-defendant a "repeat-player." Because of their position and greater expertise, repeat-players are expected to "settle" weaker cases and litigate stronger cases. It might be expected that employees have a more favorable prelitigation success rate.

In fact, this last proposition draws some support from the results which indicate that settlement occurred in 35.7 percent of the cases. Settlement can reasonably be interpreted as containing some measure of success for the complainant. Yet even when combined with the proportion of probable cause findings (0.3 percent), it is apparent that employers have consistently mounted successful defenses.

Cross-Tabulations and Chi-Squares

Through the use of cross-tabulations and associated chi-squares, significant relationships were found between several variables. Table 39 provides a summary of the relationships between the independent variables and their impact on complaint outcome.

There did not appear to be an effect of personnel action on complaint outcome ($X^2 = 3.490$, $p = .175$). Across non-termination (hiring, promotion/demotion, compensation/conditions of employment) cases, 38.7 percent resulted in a settlement for the complainant compared to 33.6 percent of the termination cases ending in a settlement. Additionally, two of the three cases ending in a public hearing decision favorable to the complainant involved a non-termination issue. Therefore, although not statistically significant, as the personnel action lessens in severity, the more successful complainants are.

It was predicted that females would experience more success than males when filing age discrimination complaints. However, there does not appear to be support for this hypothesis ($X^2 = 3.158$, $p = .206$). Males filed 61.2 percent of the total complaints and suffered 56.7 percent of the no probable cause findings. Among all males, 61.4 percent received a no probable cause finding while similarly among all females, 67.0 percent received a no probable cause finding.

There did not appear to be an impact of industry on case outcome ($X^2 = 5.809$, $p =.445$). Each of the industry categories received approximately the same percentage of no probable cause findings as the percentage of total cases for that category.

Table 39

Selected Cross-Tabulations of Complaint Characteristics and Outcome

Variables	N	Chi-Square	Probability
Outcome X Sex	942	3.158	0.206
Outcome X Industry	677	5.809	0.445
Outcome X Personnel Action	982	3.490	0.175
Sex X Industry	817	23.161	< 0.001**
Sex X Personnel Action	1192	3.682	0.055*
Industry X Personnel Action	853	97.995	< 0.001**

$^*p \leq .10$ $\quad$ $^{**}p \leq .001$

There was a significant relationship between the sex of the complainant and industry of the respondent ($X^2 = 23.161$, $p < .001$) and between sex of the complainant and challenged personnel action ($X^2 = 3.682$, $p = .055$). Across females, the majority (51.9 percent) were employed in a retail or service organization. In contrast across males, the majority (39.5 percent) were employed in a manufacturing concern. One possible explanation for this result is the traditional placement of women in the job market as sales and clerical workers.

Looking at the personnel action and sex of the complainant relationship, it appears that across females, 55.3 percent of the complaints involved a termination issue. Across males, 60.9 percent of the complaints involved a termination issue.

Additionally, there was a significant relationship between industry of the respondent and the challenged personnel action

($X^2 = 97.995$, $p < .001$). The majority (90 percent) of cases involving a termination issue were brought by private sector employees. It is not surprising given the job security of public sector employees that they are more concerned with job status issues rather than discharge actions.

Conclusions

The results reported indicate the Connecticut Human Rights and Opportunities Law has become the primary device for males in redressing arbitrary personnel decisions. This finding is consistent with the experience of the ADEA in federal court, and serves to create a potential conflict between the employment rights of older workers and those of workers protected under Title VII-type legislation. The sex of the complainant did not appear to have an impact on case outcome.

While the study identified the degree to which complainants settle claims, there was no data available to determine whether the complainants significantly benefitted from the settlement agreements reached. This is a qualitative issue demanding further research.

Future research is also required on the issue of whether the full enforcement of both age discrimination legislation and Title VII-type legislation will result in older white males and minorities utilizing their respective statutory rights in competition for the same employment opportunities.

NOTES

1. Conn. Rev. Gen. Stat., Chapter 814c, Sections 46a-51 et seq. (1986).

2. Id.

3. The ADEA requires that, in states that have a law prohibiting age discrimination in employment, complainants first must file under the state law. 29 U.S.C. § 633(b) (1982). Section 633(b) provides in relevant part:

> In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626i of this title before the under expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated.

Id.

CHAPTER TWELVE

THE FILING AND OUTCOME OF STATE AGE DISCRIMINATION COMPLAINTS: THE GEORGIA EXPERIENCE

This chapter presents an empirical analysis of the challenged personnel action associated with the outcome of age discrimination complaints brought under the Georgia Fair Employment Practices Act of 1978.[1] The results are presented through the use of frequency distributions, cross-tabulation and the chi-square test. There did not appear to be an impact of personnel action on complaint outcome.

The Georgia Fair Employment Practices Act

The Georgia Fair Employment Practices Act of 1978 prohibits discrimination in public employment on the basis of age between the years of 40 and 70.[2] This statute applies to any state department, commission or other agency which employs 15 or more employees.

The state Office of Fair Employment Practices (OFEP) is responsible for enforcing federal EEO laws and the state Fair Employment Practices Act with respect to public employees.[3] Since fiscal year 1985,[4] the OFEP contracted with the EEOC to accept deferral of age complaints filed with the EEOC by state employees and applicants for state employment.[5]

After the filing of a complaint, the OFEP investigates and issues a reasonable cause or no reasonable cause finding. If the complaint is dismissed, the complainant can appeal to the appropriate state Superior Court. If a reasonable cause finding is made, conciliation is attempted. If no settlement is reached, the complaint is referred to a Special Master for a hearing. Any order of the Special Master can be appealed to the Superior Court.

Hypothesis

As a result of the novelty of the study, little research exists on identifying factors which may predict whether an individual worker will experience success when filing an ADEA complaint. As in the case in all employment discrimination litigation, there is a deference to an employer's right to hire, fire, promote or otherwise manage employees as it so wishes. This regard for management prerogatives can be expected to be particularly strong where the personnel action is of great significance, such as discharge or early retirement (Schuster & Miller, 1986). At the same time, the decision-maker in the complaint process will find it less intrusive to force an employer's hand in matters such as promotions, transfers and compensation. As a result, it is asserted here that the more severe the personnel action, the less likely complainants will experience success.

Methodology

The data source for this study was a typed listing of all charges in which age was a factor processed by the OFEP between August, 1983 and August, 1986. The data set consisted of 81 closed complaints.

The OFEP maintains a non-computerized record keeping system. Therefore information on personal and workplace characteristics associated with the filing of age discrimination complaints was not readily available. The listing did provide information on the following variables: disputed personnel action and complaint outcome.

In order to permit a useful and manageable statistical analysis, categories for both variables were collapsed or deleted. The personnel action variable was constructed by including discharge, constructive discharge and reduction in force in the "termination" category and grouping compensation, failure to upgrade, job assignment, harassment, discipline and other terms and conditions of employment in the "compensation/conditions of employment." The outcome variable omitted cases that were dismissed because of either administrative closure or withdrawn by complainant.

Results and Analysis

Frequencies

Previous research concerning federal court actions under the ADEA showed that the majority of claims were prompted by the personnel actions of discharge or involuntary retirement (Schuster & Miller, 1986). From Table 40, it can be seen that the Georgia analysis produced different results, where termination was the challenged personnel action in 29.6 percent of the cases, 28.4 percent of the cases involved hiring, 21 percent of the cases involved promotion and 21 percent involved compensation/conditions of employment. These results are not surprising given that the sample consisted entirely of public sector employees who would be more concerned with job status issues rather than termination actions.

Table 40 also reports on the outcome of complaints filed under the Georgia Act. Among all cases, a finding of no probable cause of discriminatory conduct occurred 89.6 percent of the time.

Table 40

Frequencies and Percentages of Complaint Characteristics

	Frequency	Percentage
A. Personnel Action (N=81)		
Termination	24	29.6
Hiring	23	28.4
Promotion	17	21.0
Compensation/Conditions of Employment	17	21.0
B. Outcome (N=77)		
No Probable Cause	69	89.6
Probable Cause	6	7.8
Settlement	2	2.6

While it is apparent that employers have consistently mounted successful defenses the results also indicated that six complaints (7.8 percent) ended in a probable cause finding.

Cross-Tabulations and Chi-Square

It was asserted that the more severe the personnel action,the less likely complainants will experience success. However, there does not appear to be support for this hypothesis ($N = 77$, $X^2 = 2.186$, $p = .335$). Across non-termination (hiring, promotion, compensation/conditions of employment) cases, 90.9 percent resulted in a no probable cause finding, 5.5 percent received a probable cause finding and 3.6 percent ended in a settlement. Across the termination cases, 86.4 percent suffered a no probable cause finding and 13.6 percent received a probable cause finding. Interestingly, although cases involving termination accounted for approximately 30 percent of the total cases,they received 50 percent of the probable cause findings. Therefore, although not statistically significant, it appears that the more severe the personnel action, the more successful the complainant.

Conclusions

The majority of complaints brought under the Georgia Fair Employment Practices Act involved a non-termination issue. The results show that the overwhelming majority of cases ended in a no probable cause finding. While the study identified the degree to which complainants settle claims, there was no data available to determine whether the complainants significantly benefitted from the settlement agreements reached. This is a qualitative issue demanding further research.

NOTES

1. Official Code of Georgia Ann., Article 2, Chapter 19, Title 45, Section 45-19-20, *et seq.* (1981).

2. *Id.*

3. Official Compilation of Rules and Regulations Georgia, Section 192-1 *et seq.* (1985); O.C.G.A. Section 45-19-24 *et seq.*

4. Georgia Office of Fair Employment Practices. Annual Report for the Fiscal year 1985, p. 10.

5. The ADEA requires that, in states that have a law prohibiting age discrimination in employment, complainants first must file under the state law. 29 U.S.C. § 633(b) (1982). Section 633(b) provides in relevant part:

> In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626i of this title before the under expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated;
>
> *Id.*

CHAPTER THIRTEEN

THE FILING AND OUTCOME OF STATE AGE DISCRIMINATION COMPLAINTS: THE MARYLAND EXPERIENCE

This chapter presents an empirical analysis of factors associated with the filing and outcome of age discrimination complaints brought under the Maryland Fair Employment Practices Act.[1] The analysis will focus on personal and workplace characteristics associated with the filing of age discrimination complaints. The results are presented through the use of frequency distributions, cross-tabulations and chi-square tests. Significant relationships were found among numerous variables.

Maryland Fair Employment Practices Act

The Maryland Fair Employment Practices Act (FEP), prohibits job discrimination based on an individual's age in the areas of hiring, discharge, compensation, and terms and conditions of employment.[2] The FEP applies to employers with more than 15 employees, employment agencies, labor organizations and the State of Maryland.

The FEP is enforced by the Maryland Commission on Human Relations (CHR), a deferral agency of the EEOC.[3] The CHR is authorized to receive age complaints and determine the merits of such complaints. Once received, a complaints is investigated by the CHR's staff, and written findings are issued. If the staff makes a probable cause finding, the staff seeks to resolve the discrimination through conference, conciliation, and persuasion. If an agreement is reached with the CHR and employer, the CHR issues an order setting forth the terms of the agreement.

In the event no agreement is reached, the CHR will require the employer to answer the complaint at a public hearing before a hearing examiner. This hearing is transcribed, and there is a right to present witnesses and other evidence. The CHR is represented by its General Counsel. If the hearing examiner feels unlawful discrimination has occurred, a cease and desist order will be issued, along with an order for the employer to take affirmative action to remedy and damages to the complainant. These orders are reviewable by a CHR Appeal Board and can then be enforced in a county court.

If the staff investigation found no probable cause to believe alleged discrimination had occurred, the complainant may appeal to the CHR's Executive Director for reconsideration.

Hypothesis

As a result of the novelty of the study, little research exists on identifying factors which may predict whether an individual worker will experience success when filing an ADEA complaint. Schuster and Miller (1986) concluded from an analysis of ADEA claims resolved in federal courts, that the sex of the complainant influences case outcome. Specifically, the research found women to be more successful as litigants in ADEA cases.

The authors suggested that the added protection afforded women under Title VII, even when not asserted, may be influencing in a positive manner the treatment of women as ADEA complainants.

This same logic extends to the race of age discrimination complainants. It can be expected that older, nonwhites, enjoying the dual protection of Title VII and the ADEA, will have the merits of their claims examined on a more favorable basis. This should remain true even where race discrimination is not alleged, because the spectre of Title VII protection remains throughout the proceedings.

While age discrimination legislation seeks to protect older workers, the protective bracket during the time period studied of both the federal ADEA and the Maryland statute span over 30 years. Since it is clear that the impact of the negative personnel actions increases as a work ages (Boglietti, 1974; Rosenblum, 1975), a 40 year-old complainant may not necessarily be viewed in a manner equivalent to that of a 60 year-old complainant. Assuming that the progression is not lost on decision-makers in the age discrimination complaint process, complainants in the upper bounds of the age bracket can be expected to experience more success in case outcomes.

A causal relationship arguably exists between union membership and the outcome of complaints. Union workers functioning within the traditional grievance process should be more aware of the machinations involved in asserting workplace rights. Moreover, union workers who file age discrimination complaints against an employer will generally have the benefit of the support framework provided by the union. Therefore a complainant's union status should be positively associated with case outcome.

In light of the special nature of state agency proceedings, where complaints often proceed without representation by counsel, it is suggested here that the complainant's occupation will influence case outcome. Those workers which fall into a management or professional employment category, can be though to be better suited for the organization of information and the assertion of arguments demanded by the complaint process. Thus, white collar workers should succeed more often than other occupational categories.

It can also be expected that an employee who suffers an adverse personnel decision through a highly structured personnel system, such as civil service, will be less able to attack the decision as arbitrary. Thus, public sector employees should receive fewer probable cause findings than various private sector employees.

As in the case in all employment discrimination litigation, there is a deference to an employer's right to hire, fire, promote or otherwise manage employees as it so wishes. This regard for management prerogatives has been found to be especially strong where the personnel action is of great significance, such as discharge or early retirement (Schuster & Miller, 1986). At the same time, the decision maker in the complaint process will find it more comfortable to force an employer's hand in matters such as promotions, transfers and compensation. As a result, it is asserted here the more severe the personnel action, the less likely complainants will experience success.

Methodology

The data source for this study was a hand written listing of age discrimination in employment complaints filed with the Maryland Commission on Human Rights from January, 1981-September, 1985. The data set contained 446 closed complaints.

The listing provided information on the following variables: age, race, sex, occupation and union membership status of the complainant, industry of the respondent, disputed personnel action and complaint outcome. In order to permit a useful and manageable statistical analysis, categories for several variables were collapsed or deleted.

The personnel action variable was constructed by including termination, forced retirement, constructive termination, lay-off and forced resignation in the "termination" category and grouping wages, retaliation, harassment, discipline and other terms and conditions of employment as "compensation/conditions of employment." The outcome variable omitted cases that were dismissed because of either lack of jurisdiction or administrative closing.

Results and Analysis

Frequencies

As Table 41 indicates, age discrimination complainants under the Maryland Fair Employment Practices Act have been predominantly male (57.2 percent). The vast majority of complainants have also been white (82.7 percent). It may be that women and non-whites are more likely to charge sex or race discrimination, historically viewed as more invidious than age discrimination (Blumrosen, 1982). Moreover, it may be that age discrimination legislation provides the only recourse for older, white males who believe they have unfairly suffered an adverse personnel action (Schuster & Miller, 1986).

Among all complainants, 54.4 percent have been between the ages of 50-59. Thus it would appear that the Maryland employment discrimination statute is receiving the most attention by those employees likely to be in greatest need of protection. That is, those older workers who: (1) have reached the end of their career path with a particular organization, (2) are priced higher than young workers, (3) would find it difficult to start over, and (4) are not yet close enough to the security of retirement benefits. This is particularly important in light of research concluding that workers in the 55 and over age group have the highest rate of discouraged workers of any age group, and the general finding that the risk of long-term unemployment

Table 41

Frequencies and Percentages of Complaint Characteristics

	Frequency	Percentage
A. Sex (N=446)		
Male	255	57.2
Female	191	42.8
B. Age (N=430)		
40-49	114	26.5
50-59	234	54.4
60-70	82	19.1
C. Race (N=439)		
White	363	82.7
Non-White	76	17.3
D. Union Membership (N=446)		
Non-union	382	85.7
Union	64	14.3
E. Occupation (N=398)		
Professional/Managerial	156	39.2
Blue Collar	126	31.7
Clerical	61	15.3
Retail	55	13.8
F. Industry (N=385)		
Services	160	41.6
Manufacturing	95	24.7
Wholesale/Retail	81	21.0
Government	49	12.7
G. Personnel Action (N=446)		
Termination	293	65.7
Compensation/Conditions of Employment	80	17.9
Hiring	41	9.1
Promotion/Demotion	32	7.2

(TABLE 36 Continued)

H. Outcome (N=398)

No Probable Cause	306	76.9
Probable Cause	70	17.6
Settlement	22	5.5

increases significantly for non-working males reaching the age of 50 (Boglietti, 1974; Rosenblum, 1975).

Among all complainant, 14.3 percent were designated as union members. This is slightly less than the proportion of union members in the Maryland State labor force (U.S. Bureau of the Census, 1986).[4] Even so, this percentage could be considered somewhat high in light of unions' preference for the contractual grievance procedure for resolving workplace disputes. Generally, grievance procedures allow such issues to be adjudicated more quickly than in administrative proceedings and have a greater or equal likelihood of success (Oppenheimer & LaVon, 1979). Perhaps older workers are concerned with the need for union leadership to show concern for the job security of all workers. Such political interests could create the impression that full union support, for example in discharge cases, is unlikely to surface.[5]

Similar to ADEA claims brought in the federal courts (Schuster & Miller, 1986), most complainants in the state actions were professional or managerial employees (39.2 percent). Blue collar workers were involved in 31.7 percent of the cases. In a related manner, among industries, those providing services (41.6

percent) and manufacturing organizations (24.7 percent) attracted the majority of ADEA complaints.

Previous research concerning federal court actions under the ADEA showed that the majority of claims were prompted by the personnel actions of discharge or involuntary retirement (Schuster & Miller, 1986). From Table 41, it can be seen the Maryland analysis produced similar results, where termination was the challenged personnel action in 65.7 percent of the cases. Older workers may tolerate less severe forms of age-based employment discrimination, and publicly address their grievances only when separation occurs.

Table 41 also reports on the outcome of complaints filed under the Maryland statute. Among all cases, a finding of no probable cause of discriminatory conduct occurred 76.9 percent of the time. This employer success rate may support Galanter's proposition that frequent litigators have advantages over less frequent litigators (Galanter, 1979). Complainants received a probable cause finding in 17.6 percent of the cases. Settlement, which can reasonably be interpreted as containing some measure of success for the complainant occurred in 5.5 percent of the cases. Yet, it is apparent that employers have consistently mounted successful defenses.

Cross-Tabulations and Chi-Squares

Through the use of cross-tabulations and associated chi-squares, significant relationships were found between many variables. Table 42 provides a summary of the relationships between the variables and their impact on complaint outcome.

Sex of the complainant. It was hypothesized that females would experience greater success than males when filing age discrimination complaints. However, there does not appear to be support for this hypothesis ($X^2 = 0.841$, $p = 0.657$). While males filed 57.2 percent of the complaints, they received 60.0 percent of the probable cause findings. Among all males, 76.1 percent suffered no probable cause findings and 18.9 percent enjoyed probable cause findings. Similarly, 77.8 percent of females received no probable cause findings and only 15.9 percent managed probable cause findings.

The sex of complainants differed significantly among the occupational categories ($X^2 = 45.248$, $p < .001$). In particular, while females filed 42.8 percent of all complaints, they brought 83.6 percent of those claims falling into the Clerical category. However, males predominated in the Professional/Managerial, Blue Collar and Retail categories. This sex difference is also evidenced within the groups. Among females the majority (31.1 percent) were employed as a professional or manager with 28.8 percent employed as clerical workers and 28.2 percent working in blue collar jobs. In contrast, among males 45.7 percent worked

Table 42

Selected Cross-Tabulations of Complaint Characteristics and Outcome

Variables	N	Chi-Square	Probability
Outcome X Sex	398	0.841	0.657
Outcome X Age Group	383	13.176	0.010**
Outcome X Race	392	2.608	0.271
Outcome X Union Membership	398	0.905	0.636
Outcome X Occupation	353	6.268	0.394
Outcome X Industry	343	19.040	0.004**
Outcome X Personnel Action	398	3.931	0.140
Sex X Union Membership	446	11.471	0.001**
Sex X Occupation	398	45.248	<0.001**
Sex X Industry	385	6.746	0.080
Race X Age Group	424	7.279	0.026**
Race X Occupation	392	17.999	<0.001**
Race X Industry	380	20.451	<0.001**
Race X Personnel Action	439	4.355	0.037**
Occupation X Union Membership	398	36.588	<0.001**
Occupation X Industry	343	53.456	<0.001**
Occupation X Personnel Action	398	6.635	0.085**
Industry X Union Membership	385	13.490	0.004**
Industry X Personnel Action	385	28.296	<0.001**
Union Membership X Personnel Action	446	9.875	0.002**

*p $\leq$ .10 **p $\leq$ .05

in a professional or managerial capacity and 34.4 percent worked in blue collar jobs.

There was also a significant relationship between sex of the complainant and industry ($X^2 = 6.746$, $p = 0.080$). Across females, the majority (68.5 percent) were employed in a service or retail organization. In contrast, across males, the majority (66.2 percent) were employed in a manufacturing or service organization.

In addition, the sex of the complainant was significantly related to union membership ($X^2 = 11.471$, $p = .001$). While females comprised 42.8 percent of the total sample, they were only 23.4 percent of the union members. This sex difference is also evidenced within the groups. Across females, 7.9 percent were union members. These result are consistent with the proportion of women union members in the national labor force (U.S. Bureau of the Census, 1986).

Race of the complainant. On the basis of their dual protective status, it was predicted that non-whites would fare better than whites in the outcome of complaints. However, our results do not indicate an effect of race of the complainant on case outcome ($X^2 = 2.608$, $p = 0.271$). Among non-whites, 84.1 percent of their claims resulted in a no probable cause finding as compared to 75.2 percent for whites. Similarly whites had 18.9 percent of their complaints result in a probable cause finding, with only 13.0 percent of non-white complainants receiving probable cause determinations. At the same time, whites brought 82.7 percent of the claims, but enjoyed 87.1 percent of all probable cause findings. One possible explanation for this finding is since racial discrimination may be viewed as more invidious, a race discrimination complainant can expect to have their grievance addressed with greater scrutiny. Thus non-whites with meritorious claims chose the more established route of race-based discrimination under Title VII.

There was a significant relationship between race and age of the complainant ($X^2 = 7.279$, $p = 9.026$). This finding seems to stem primarily from the variation between whites and non-whites in the 40-49 age group and the 60-70 age group. Across whites 24.9 percent were 40-49 years and 20.9 percent were 60 years or over. In contrast, across non-whites, 36.5 percent were age 40-49 and only 9.5 percent were in the 60-70 age group. Thus, it appears that non-white complainants were younger than white complainants.

A significant relationship was found between race and the challenged personnel action ($X^2 = 4.355$, $p = 0.037$). Non-white complainants comprised 17.3 percent of the total sample, yet brought 22.5 percent of the non-termination cases. It appears then that non-whites are more likely to bring complaints involving less severe personnel actions than are white employees. One possible explanation is that non-whites are more aware of their legal employment protections than are white employees and therefore challenge their employer's actions before termination.

Age of the complainant. It was expected that older members of the protected age bracket would fare better than younger bracket members. However, there appears to be mixed support for that hypothesis ($X^2 = 13.176$, $p = 0.010$). The 40-49 age group, filed 26.5 percent of all complaints, but received only 20.3 percent of probable cause findings. At the same time, the 50-59 age group filed 54.4 percent of the complaints, but enjoyed a 45.3 percent of probable cause findings. In addition, the 40-49 and 50-59 groups suffered the highest proportions of no probable cause findings, 82.8 percent and 81.5 percent, respectively.

Interestingly, though, among those complainants 60 and over, only 63.0 percent received no probable cause findings, the lowest proportion of all age groups. Similarly, the 60 and over group experienced 34.4 percent of all probable cause findings and 26.3 percent of all settlements, while filing only 19.1 percent of the claims. While somewhat at odds, these results do suggest that those in the 60-70 age group do experience greater success than their younger counterparts. Yet, these findings suggest that those workers cited earlier as in greatest need of protection, age 50-59, are in fact failing in these claims most often.

Union membership. It was hypothesized that union members would experience more success than non-union complainants. However, there does not appear to be support for this hypothesis ($X^2 = 0.905$, $p = 0.636$). This could be considered as somewhat surprising, in light of established advocacy resources available to most union members. However, since most complainants are not union members, it may be that those union members filing claims are merely forum shopping following a rebuke from the union grievance process. Such claims are likely to be weaker in substance. The results, although not statistically significant appear to support this explanation. Union member filed 14.3 percent of all claims, but received only 11.4 percent of probable cause findings.

There was a notable relationship between union membership and personnel action ($X^2 = 9.875$, $p = 0.002$). Non-union workers filed 85.7 percent of the complaints, but were responsible for 89.4 percent of those claims charging illegal termination and 78.4 percent of claims involving non-termination actions. It is clear that to some extent, union members are not forced to challenge these personnel actions as often as non-union workers. This finding may be the results of 1) collective bargaining agreements which generally require the establishment of "just cause" for discharge and 2) greater union influence on the hiring process, e.g. hiring halls.

Occupation of the complainant. The results did not support the hypothesis that professional or managerial employees would experience more success than the other occupational categories ($X^2 = 6.268$, $p = 0.394$). While professional/managerial employees filed 39.2 percent of the claims, they received 39.0 percent of the probable cause determinations. Within the occupational categories, professional/managerial suffered the next lowest proportion of no probable cause findings (76.8 percent), while retail (80.4 percent), and blue collar (82.1 percent) workers received an increasingly higher proportion of no probable cause findings.

There was a significant relationships between occupation and personnel action ($X^2 = 6.635$, $p = 0.085$). Among professional/managerial employees, 65.4 percent of the cases involved termination. This figure is low relative to the retail category (83.6 percent), blue collar workers (71.4 percent), and clerical workers (68.9 percent). It would appear that professional workers are more secure in their employment situation.

Industry of the respondent. As predicted, public sector employees received fewer probable cause findings than the various private sector employees ($X^2 = 19.040$, $p = 0.004$). Public sector employees filed 12.7 percent of the total claims, but received only 10.5 percent of the probable cause determinations.

Additionally, there was a significant relationship between industry of the respondent and the challenged personnel action ($X^2 = 28.296$, $p < 0.001$). Surprisingly, public sector employees brought 25.2 percent of the non-termination actions and only 6.7 percent of the cases involving termination. It would seem that public sector employees would be more concerned with job status issues rather than discharge actions.

Personnel action. There did not appear to be an impact of challenged personnel action on case outcome ($X^2 = 3.931$, $p = 0.140$). It had been hypothesized that the more severe the personnel action, the less likely complainants would experience success. Termination was the challenged personnel action in 65.7 percent of all cases. However, 74.3 percent of the cases resulting in a probable cause finding involved a termination action.

Conclusions

The results reported indicate the Maryland Fair Employment Practices Act has become the primary device for white males in redressing arbitrary personnel decisions. This finding is consistent with the experience of the ADEA in federal court, and serves to create a potential conflict between the employment rights of older workers and those of workers protected under Title VII-type legislation.

The majority of claims were filed by those in the 50-59 age group. However, the complainants experiencing the most success in their claims were in the 60-70 year bracket. Therefore, it appears that those most in the need of protection, ages 50-59, are in fact failing in their claims most often.

The majority of complainants worked for a service organization. Yet, government employees received fewer probable cause findings then the private sector workers. One possible explanation is that an employee who suffers an adverse personnel decision through a highly structured personnel system, such as civil service, will be less able to attack the decision as arbitrary.

While the study identified the degree to which complainants settle claims, there was no data available to determine whether the complainants significantly benefitted from the settlement agreements reached. This is a qualitative issue demanding further research.

Future research is also required on the issue of whether the full enforcement of both age discrimination legislation and Title VII-type legislation, will result in older white males and minorities utilizing their respective statutory rights in competition for the same employment opportunities.

NOTES

1. Ann. Code of Maryland, Article 49B, Sections 1-28 (1983).

2. Id.

3. The ADEA requires that, in states that have a law prohibiting age discrimination in employment, complainants first must file under the state law. 29 U.S.C. § 633(b) (1982). Section 633(b) provides in relevant part:

> In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626i of this title before the under expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated.
>
> Id.

4. In 1982, 18.6 percent of the Maryland labor force were union members.

5. See, e.g., Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974).

CHAPTER FOURTEEN

ANALYSIS OF THE INCIDENCE OF ORGANIZATIONAL RETALIATION: WISCONSIN SURVEY RESULTS

Over the last decade, the filing of complaints under the Age Discrimination in Employment Act (ADEA) has increased dramatically (Schuster & Miller, 1984b). Filing employment discrimination complaints has recently been included within the definition of whistleblowing. An act of whistleblowing occurs when a person publically discloses illegal, immoral or illegitimate practices under the control of their employer to persons or organizations who may be able to effect action (Elliston, Keenan, Lockhart, & Van Schaick, 1985). Since other forms of whistleblowing have been subject to organizational retaliation (Nadar, Petkas, & Blackwell, 1972) it can be expected that older workers face similar dangers in filing age discrimination in employment claims.

Retaliation against the whistleblower for publicizing illegal organizational conduct can take numerous forms, including (1) isolation (e.g., exclusion from meetings), (2) defamation of character, (3) loss of promotion opportunities, (4) demotion or transfer, and (5) expulsion. The ultimate impact of these retaliatory actions is that employees, who believe themselves to be victims of unfair discrimination may choose not to file charges with a state or federal agency, because they fear that the costs of filing and carrying through the complaint may outweigh any benefit they or others affected by the questionable employment practice could reasonably expect to derive. Any set of factors that discourage potentially aggrieved employees from filing complaints undermines the fundamental purposes and policies of equal employment opportunity legislation.

The focus of research on organizational retaliation has been primarily case studies (Nadar et al., 1972; Perrucci, Anderson, Schendel & Trachtman, 1980), with three reports based on survey responses (Near & Jensen, 1983; Near & Miceli, 1986; Parmalee, Near & Jensen, 1982). No study has examined the impact on age related complaints.

The threat or impact of retaliation against older employees can be particularly damaging for several reasons. The majority of age discrimination complaints are filed by those in the 50-59 age bracket, and those are the employees most susceptible to retaliation. That is, those older workers who: (1) reached the end of their career path with a particular organization, (2) are priced higher than young workers, (3) would find it difficult to start over, and (4) are not yet close enough to the security of retirement benefits (Schuster & Miller, 1984b).

This chapter reports the results of a study of 122 individuals who filed age discrimination in employment complaints from 1973-1983 with the Wisconsin Equal Rights Division (WERD), the administrative agency for the Wisconsin Fair Employment Law (FEL).[1] FEL is functionally similar to the ADEA, prohibiting the use of age as a factor in the hiring, promotion, compensation or discharge of individuals between the ages of 40-70.[2]

The purpose of the study is to investigate the incidence, manner and degree of organizational retaliation against the older workers who "whistle-blow" by filing employment discrimination complaints. This study is a replication and expansion of the Parmalee et al. (1982) study of organizational retaliation against women who filed Title VII employment discrimination charges with WERD. This study expands on Parmalee et al. (1982) by using a different population of subjects (older workers), by the inclusion of new independent variables, and the redefinition of one of the key dependent variables, stages of retaliation. Specifically, the reaction of the immediate supervisor to the complainant and gender of the complainant were included in the analyses. In addition, the present study tests the theory of organizational retaliation developed by Parmalee et al. Our subject pool is also substantially larger.

HYPOTHESES

Co-worker support

When whistleblowers receive demonstrated support from co-workers, retaliation by the organization requires more effort than it does when it is targeted at an isolated individual. Retaliation is also likely to be less effective in limiting the effect of whistleblowing on the organization if the cause has been taken up by co-workers of the whistleblower.

Hyp. 1: There will be a negative correlation between the degree of co-worker support and retaliation.

Views of senior management

If the posture of senior management is openly hostile toward the whistleblower, the incidence of retaliation toward the complainant is likely to be greater than if the top level of management is indifferent, supportive and/or cooperative toward the whistle-blower.

Hyp. 2: There will be a positive correlation between the perceived hostility of top management toward the complainant and retaliation.

Views of supervisor

If the attitude of the supervisor is openly hostile toward the whistle-blower the incidence of retaliation toward the complainant is likely to be higher than if the supervisor is indifferent, supportive and/or cooperative toward the whistleblower.

Hyp. 3: There will be a positive correlation between the perceived hostility of the supervisor and retaliation.

Merit of the complaint

If organizational authorities are assumed to be rational, one would expect the degree of retaliation to be commensurate with the potential damage arising from the complaint (Weinstein, 1979, p.111). In the case of age discrimination complaints, if the complaint is found to be meritorious then there is likely to be a greater negative impact on the organization. A rational organization would likely respond more harshly to those complaints that are meritorious.

Hyp. 4: There will be a positive correlation between the legal finding of merit of the complaint and retaliation.

Age and Education

Whistleblowing by older, experienced and educated (highly valued) employees may represent a lapse in socialization on the part of the organization, as well as serve as a strong role model for workers who feel threatened during the present environment of corporate restructuring.

In addition, a stronger sense of betrayal of the organization may be experienced by management when longer tenured workers seemingly turn on the organization.

Hyp. 5: There will be a positive correlation between the age or educational experience of the complainant retaliation.

Sex

This variable was included in an exploratory manner to assess if there is an association between gender and retaliation against the whistleblower. An argument can be made for greater retaliation against men or women. On one hand, management may feel more betrayed by male employees and therefore respond more harshly to them. Alternatively, there is evidence of retaliation against female whistleblowers (Parmalee et al. 1982).

METHODOLOGY

Mail surveys (N=550) were distributed to a random sample of men and women who filed age discrimination in employment complaintsn from 1973-1983 with WERD, which provided the list of names and addresses. Each subject received the survey, introductory letter, and post paid return envelope. A 24% (N=122) return rate, considered very high for this type of research was achieved. Anonymity was guaranteed to all respondents and who were encouraged to provide written or qualitative responses in addition to the survey (See Appendix D).

The Questionnaire

The questionnaire was adapted from the Parmalee et al. (1982) survey of female Title VII complainants with WERD. Respondents were asked questions in five general areas: (1) items providing demographic information; (2) information regarding any subsequent litigation; (3) respondents evaluating the impact of their complaint on co-workers; (4) the reaction of management; and (5) their evaluation of the overall effectiveness of the ADEA remedy (See Appendix C).

RESULTS

Demographic Results

The demographic analysis of the survey respondents revealed that 59 percent were male and 41 percent were female with only one respondent reported to be non-white. It may be that women and nonwhites are more likely to charge race or sex discrimination, which has historically been viewed as more insidious than age discrimination (Blumrosen, 1982). The mean age of respondents, at the time of filing the charge, was 53 years of age.

Twelve percent of the respondents were college graduates while an additional 10 percent reported some college work. Sixty-three percent of the respondents reported graduation from high school as their highest level of education and 14 percent did not graduate from high school.

The occupational distribution of the respondents indicates a greater incidence of age discrimination complaints filed by workers employed as managers or professionals (45%). An additional 31 percent reported labor, crafts, or service occupations. The remaining 24 percent of the respondents were employed in clerical or sales positions. The concentration of complaints among professionals and managers may be related to greater exposure to information concerning the ADEA remedy.

The distribution of industry of the employer indicates that the majority of age discrimination complainants work in the private sector. Specifically, approximately 31 percent are employed by manufacturers and 19 percent in service organizations.

Sixty percent of the complaints were filed because of discharge, 17% as a result of compensation or conditions of employment, and 16% because of failure to be hired. The demographic characteristics of the sample are consistent with previous studies of the ADEA (Miller, Schuster & Havranek, 1986; Schuster & Miller, 1984b).

Impact on co-workers

This section of the questionnaire was assigned to measure the level of hostility respondents perceived from their co-workers. Respondents were asked to give a general response regarding the reaction of their co-workers to the filing of the discrimination complaint (see Table 43). In cases where complainants filed age discrimination complaints after discharge by their employer, co-worker reaction is less likely to be measurable. This may be reflected in the "unknown" category in Table 43. Forty-four percent of the respondents felt their co-workers were generally moderately to very supportive. Only eight percent of the respondents reported co-worker hostility. Hostility was reported as extreme, moderate or "cold shoulder." Only three percent of respondents reported experiencing extreme hostility. The primary manifestations of the negative attitudes of co-workers were reported in the area of communication with respondents. Hostile

Table 43
Reaction of Co-workers
(in percentage)

Reaction	Percentage*
Very supportive	28
Moderately supportive	16
No change	6
"Cold shoulder"	15
Moderately hostile	4
Extremely hostile	3
Other	11
Unknown	16

*Note: percentages do not sum to 100% due to rounding.

co-workers either stated their disapproval of the complaint to respondents or stopped talking to respondents.

Respondents were asked to describe any common characteristics of supportive co-workers and hostile co-workers (see Table 44).

When the two profiles are compared the following conclusions can be summarized:

1) Supportive co-workers tended to be long-term employees with similar jobs to complainants' jobs, reporting to the same supervisor.
2) Supportive co-workers tended to have "at least some college education."
3) Hostile co-workers tended to be long-term employees in senior or supervisory positions to complainant or reporting to the same supervisor.
4) Hostile co-workers tended to be younger and male.
5) Hostile co-workers were all reported to be "non-liberal."

Reaction of Management

Respondents were asked to evaluate the reaction of management toward the complaint and toward the employee. For purposes of the survey, management was divided into three levels: top management, middle management and the direct supervisor of the complainant. Respondents reported that 39 percent of top management, 32 percent of middle management, and at the level of supervisor only four percent reacted with an angry reaction. A contributing factor to the difference in supervisor responses may

Table 44

Characteristics of Co-workers

(in percentage)

	Supportive Co-workers*	Hostile Co-workers*
No characteristics in common	19	2
Male	32	22
Older	15	3
Recently employed by firm	9	7
In a more senior position than mine	16	12
Supervise me	11	15
Conservative	3	5
At least some college education	17	8
Do jobs entirely different from mine	16	6
Report to same supervisor	25	23
Report to another supervisor	13	4
Female	26	13
Younger	20	19
Long-term employee	28	14
In equal or less senior position of firm	23	8
Supervise them	12	3
No supervisory relationship	9	4
Liberal	5	0
No college education	7	6
Do jobs similar to mine	30	17
Other	4	6

*Note: percentages do not sum to 100% because respondents were allowed to choose more than one answer.

be that a direct supervisor is not usually as responsible for hiring policies as are top and middle managers.

At both the top and middle management level over 40 percent of respondents reported belief on the part of management that their employment practices were nondiscriminatory. Consistent with this result, respondents reported that 2 percent of top or middle management would be willing to reassess and correct discriminatory practices.

The potential cost of the complaint was not reported by complainants as a major concern at any level of management (14 percent top, 11 percent middle, 2 percent supervisor), although concern over being required to institute an affirmative action plan did manifest itself at the higher (19 percent) and middle (17 percent) levels of management. Again, this is consistent with the responsibility for hiring procedures traditionally found at middle and higher managerial levels.

It is significant that concern about potential costs to the employer, resulting from the complaint, were perceived by respondents to be limited in comparison to emotional reactions such as disbelief and anger at the whistleblower.

The greatest incidence of open hostility toward the complainant was reported at the supervisor level, (41 percent) although it was reported at significant levels in top (28 percent) and middle (32 percent) management as well. It is notable that although supervisors were reported to exhibit the least amount of anger of the three levels of management at the filing of the age discrimination complaint, they were also perceived by complainants to be the most hostile on a personal level. Respondents reported a very low incidence of either friendly and cooperative reactions or unchanged behavior toward them.

Retaliation

Section III of the questionnaire dealt with direct managerial reaction and retaliation. Only 12 percent reported no incidence of retaliation initiated by the organization.

Retaliatory actions by organizations against individuals have been classified by "stages" of retaliation (O'Day, 1974). The first stage of "nullification" of the complaint is manifested by pressure on the whistle-blower to drop the complaint. Of the retaliatory actions listed in the question, pressure to drop suit (10 percent), receiving heavier work load (13 percent), and more stringent criticism of work (24 percent) seem to fit this nullification stage.

The second stage is "isolation," wherein the whistleblower is restricted in activities and has his/her power base reduced. Of the events listed in the item the isolation stage is represented by exclusion from staff meetings (7 percent), loss of prerequisites (7 percent), less desirable work load (21 percent), and transfer (2 percent).

The third and fourth stages deal with direct intimidation through defamation of character and expulsion from the organization. Defamation attempts to present the whistleblower as incompetent. An individual being demoted (11 percent) seemed to fit this stage. The final stage expulsion, was represented by discharge (20 percent) from the organization. The 19 percent of the respondents who checked the other category, described such retaliatory conduct as being treated coldly or subject to verbal abuse, having their hours reduced and being given inaccurate poor performance evaluation.

Analyses

In order to analyze the linear associations between the independent variable and retaliation, both bivariate correlational analysis and multiple regression were utilized. These are the same statistical techniques reported in the Parmalee et al. (1982) study.

Retaliation. Retaliation was measured by both comprehensiveness and severity. First, comprehensiveness measured the extent to which retaliation was experienced as a general organizational response to filing the complaint. An index of comprehensiveness of retaliation was created by adding the number of affirmative responses to the question, "Did any of these things happen to you because of filing an age discrimination charge?" The lowest possible score is zero, and the highest is ten. Second, retaliation was measured by severity using O'Day's (1974) stages of retaliation. The impact on an individual of being fired is much more severe than having one's work more stringently criticized. Respondents, who responded affirmatively if they had experienced retaliation were scored according to the most severe stage of retaliation experienced from stage one (1) to stage four (4).

Co-worker support. This index was created from two items on the questionnaire: reaction of co-workers and number of supportive co-workers. Both variables were standardized (set mean = 0 and standard deviation = 1) and then the standardized variables were summed.

Views of Top Management and Supervisor. The variable view of top management was from the item which asked the respondent to describe the reaction of top management toward them. It was coded on a five point scale from friendly and cooperative (1) to openly hostile (5). This measured levels of top management hostility. In a similar manner, supervisor hostility was measured.

Merit of the Complaint. The complaint was determined to have merit if there was a finding of probable cause at the investigative stage of the dispute process. To be consistent with the Parmalee et al. (1982) study, the variable, lack of merit, was coded one (merit =0).

Correlation Results

Spearman correlations were calculated between all pairs of variables. Because there were several categorical variables, it was concluded that this was more appropriate than Pearson product-moment correlations. The results are reported in Table 45.

Hypothesis 1, concerning co-worker support, showed mixed correlational results. No correlation was found between co-worker support and comprehensiveness of retaliation. However, as predicted there was a significant negative correlation with stages of retaliation. This means that the less supportive the complainant's co-workers then the more severe was the retaliation experienced by the complainant.

Hypotheses 2 and 3 were both strongly supported for comprehensiveness of retaliation only. Greater perceived hostility of either top management or the supervisor is related to more comprehensive retaliation.

Hypothesis 4 was also partially supported by the negative correlation between lack of merit and comprehensiveness of retaliation. Complainants whose cases were found by WERD to have merit experienced more comprehensive retaliation than did these whose cases were found to lack merit. This finding fits Weinstein's (1979) theory of rational organizational behavior which posits that organizational retaliation will increase with the increased merit of a complaint. This is due to the greater potential of damage associated with a more meritorious complaint. This finding is significant because this hypothesis was not supported by the Parmalee et al. (1982) data.

Hypothesis 5 regarding correlation of age or educational level with retaliation was not supported. In addition, there were no significant correlations observed between gender and retaliation.

Table 45

Spearman Pairwise Correlations

Independent variables	1	2	3	4	5	6	7	8	9
1. Co-worker supportiveness									
2. Top management hostility	-.01								
3. Supervisor hostility	.14	.41***							
4. Lack of merit	.09	-.09	.09						
5. Age	.09	.03	-.09	-.06					
6. Sex	-.00	-.05	-.08	-.24**	-.16*				
7. Years of education	-.21**	.14	.03	-.02	-.07	.05			
Dependent variables									
8. Comprehensiveness of retaliation	.09	.26***	.27***	-.18*	-.02	.12	.04		
9. Stages of retaliation	-.39***	.13	.21	-.01	.07	-.01	.00	.19	
N^{+}	97	94	81	88	121	122	121	122	51
Mean	5.57	3.84	3.78	0.60	53.7	0.41	2.21	1.34	2.98
Standard deviation	1.53	0.95	1.38	0.49	6.05	0.49	0.84	1.80	1.12

$^{+}$:N differs depending on missing data associated with pairs of variables.

* $p \leq .10$

** $p \leq .05$

*** $p \leq .01$

Multivariate Analysis

Multiple regression was utilized to determine which variables were associated with retaliation when other variables were statistically controlled. Table 46 shows the results with the two dependent variables: comprehensiveness of retaliation and stages of retaliation. In both cases, all hypothesized predictors were included. Both regressions are non-significant. That is, from the F test of the regression relationship, we concluded that there isn't a linear relation between retaliation and at least one of the independent variables.

In addition, multiple regressions were run using the same variables as in Parmalee et al (1982). A comparison of these analyses is shown in Table 47. There are two differences in the variables between the studies. First, the Parmalee et al (1982) analysis included the variable occupational prestige. This variable was not included in this study because of the availability of actual occupational data. Second, the Parmalee study only included the first two stages of retaliation in their analysis.

There is no significant results observed in the present study to replicate Parmalee et al, which found top management hostility, age, and high occupational prestige to be significantly related to comprehensiveness of retaliation. In addition, top management hostility and age were found to be strongly related to stages of retaliation.

Table 46

Regression Analyses

Dependendent variable	Comprehensiveness of retaliation a			Stages of retaliation b		
	b	Beta	Standard error	b	Beta	Standard error
Co-worker supportiveness	.11	.09	.18	-.16	-.24	.13
Top management hostility	.23	.12	.33	.30	.27	.25
Supervisor hostility	.55	.35	.27	.35	.28	.27
Lack of merit	.53	.13	.65	.16	.07	.50
Sex	.69	.17	.63	.16	.07	.54
Years of education	.34	.14	.36	.36	.28	.27
Age	.05	.14	.05	.01	.07	.04

aF value 1.8, prob > F.11, R =.26, N=45
bF value 1.5, prob > F.25, R =.38, N=25

Discussion

The results of this study clearly show that organizational retaliation was experienced by age discrimination complainants in Wisconsin. Hypotheses concerning variables associated with retaliation were for the most part supported. Comprehensiveness of retaliation was positively correlated with perceived hostility of top management and supervisor and merit of the case. Stages of retaliation was found to be negatively associated with co-worker support. In contrast, the Parmalee et al. (1982) analyses revealed that organizations were more likely to retaliate against whistleblowers with high value to the organization (i.e. age, experience and education), and against whistleblowers whose cases lacked merit, than against other whistleblowers. These two studies seem to support opposing theories of retaliation as proposed by Near and Jensen (1983).

The present study supports the rationalistic response of the organization. The organization retaliates the most against the whistleblowers who pose the most threat to the organization (Graham, 1986). Alternatively, the organization's response is strategic by retaliating the most against those who are relatively vulnerable and pose the least threat. This response is supported by the Parmalee et al. (1982) data.

Although there were significant associates between retaliation and the independent variables, regression analyses revealed non-significant relationships. This finding is contrary to the results reported in Parmalee et al. (1982). In other words, our

Table 47

Comparison of Regression Analysis in Two Studies

Dependent variable	Comprehensiveness of retaliation						Stages of retaliation					
	Schuster et al. 1987a			Parmalee et al. 1982 (N=50)			Schuster et al. 1987b			Parmalee et al. 1982 (N=50)		
	b	Beta	Standard error	b	Beta	Standard error	b	Beta	Standard error	b	Beta	Standard error
Top management hostility	.47	.25	.24	.42	.29**	.17	.20	.16	.18	.32	.35**	.14
Lack of merit	-.20	-.05	.48	.54	.17	.39						
Years of education	-.01	-.01	.30	.16	.28	.08						
Age	.03	.09	.04	.06	.42***	.02	.01	.07	.03	.03	.30*	.01
High occupational prestige				-.02	-.25*	.01						

aF value 1.3, prob > F.28, R =.08, N=64
bF value .7, prob > F.49, R =.03, N=49
* $p \le .10$, ** $p \le .05$, *** $p \le .001$

major finding is that our results fail to support the Parmalee et al. theory of the correlates of retaliation. The following are possible explanations for our inability to replicate their results.

One explanation is that the Parmalee et al. (1982) theoretical model doesn't support data when the issue is age, not sex discrimination. It may be that the form of retaliation is different when the employment discrimination charge is age rather than sex. The results of the correlation analysis as noted above show that the present study supports a rationalistic response while the sex discrimination study supports a strategic response. A review of the literature in employment discrimination seems to show that the compelling forces behind sex discrimination (Ashenfelter & Rees, 1973) are different than the cause of employment discrimination against the older worker. Employment discrimination based on sex is based on stereotypes such as women's lack of managerial competence (Sutton & Moore, 1985). In contrast, age discrimination in employment is a result of erroneous beliefs concerning the physical and mental capability of older workers (Doering, Rhodes & Schuster, 1983).

An alternative explanation is that the data collection technique and statistical analyses are flawed. Graham (1986) discusses limitations of using survey data in whistleblowing research. She maintains that while this data is sufficient for building a descriptive model, it is inadequate for building a model that will promote organizational change. However, so little is known about retaliation against whistleblowers that all knowledge is helpful. Additionally, the same methodology, questionnaire and statistical analyses were used in both studies.

NOTES

1. Wisconsin Statutes, Chapter 111.31 et seq, as amended (1981).

2. Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621 et seq. as amended (1986).

CHAPTER FIFTEEN

CONCLUSIONS

This chapter presents some of the major findings of the research, along with policy implications from these findings. There are five sections in this chapter. The first part addresses federal litigation under the ADEA reported in Chapters Three and Four. The second section summarizes the findings of the EEOC age discrimination complaints detailed in Chapter Five. The third section addresses state agency proceedings found in Chapters Six through Thirteen. The fourth section summarizes the results of the Wisconsin survey on organizational retaliation found in Chapter Fourteen. The final segment identifies future research issues.

Federal Litigation

There were 280 federal court decisions analyzed in this research. All decisions concerned matters of substantive law and fact, and spanned the period 1968-1986. The results of this analysis are reported in detail in Chapter Three. Additional results on the role of performance appraisal in ADEA cases are reported in Chapter Four. Several important findings are noted below.

The majority of claims litigated under the ADEA have been brought by white male professionals. It would appear the ADEA has become the central device for addressing employment grievances of those workers not protected by Title VII or a collective bargaining agreement. This raises the possibility that ADEA-protected workers and Title VII-protected employees could bring the objectives of the two antidiscrimination laws into conflict, through competing in the job market.

<ins>The majority of cases have been litigated by those workers between the ages of 50-59.</ins> It would appear the Act is receiving the most attention by those employees likely to be in greatest need of protection. That is, those older workers who: (1) have reached the end of their career path with a particular organization, (2) are priced higher than younger workers, (3) would find it difficult to start over, and (4) are not yet close enough to the full security of retirement benefits. Thus, the Act is serving the interests of that age group most susceptible to discriminatory conduct.

<ins>The largest proportion of ADEA litigation originated outside the Northeast</ins>. Most of the states in the South have right-to-work laws and low union penetration. It is posited that the employment environment created by such legislation and lack of union influence has encouraged employers to be more reckless in their treatment of older workers. In addition, few of the southern states qualify as ADEA deferral states. Thus, older workers are forced to file their complaints in federal courts. These circumstances indicate that the EEOC should make strict enforcement of the ADEA in this region a priority.

<ins>The federal courts cited employee performance as the determining factor in over 35 percent of the ADEA cases studied</ins>. This finding makes it clear that there is a need for fair,

formalized appraisal systems to realize the objectives of the ADEA. However, an additional finding was that such appraisal systems were not commonly found among the cases. It is asserted that Congress through legislation, or the federal courts through judicial fiat, require the use of structured performance appraisal systems in order to support an employer defense of poor employee performance.

Employers have succeeded in the vast majority of ADEA actions. This may support the proposition that frequent litigators have advantages over less frequent litigators. Complainants may be more successful in prelitigation conciliation efforts.

Female plaintiffs had significantly greater success in ADEA actions than males. The additional protection afforded to women under Title VII may lead the courts to be particularly sensitive to personnel actions affecting females, and thus more likely to decide on their behalf. Attorneys can utilize this added legislative concern when establishing strategy for litigating an ADEA claim with a female plaintiff.

Employers were considerably more successful in defending personnel actions involving termination than personnel actions involving non-termination. The courts exhibited a deference to management prerogatives when the case involved a discharge or involuntary retirement. ADEA complainants that have been terminated may wish to thoroughly exhaust all available channels of prelitigation settlement.

EEOC Analysis

This research analyzed ADEA complaints filed with the EEOC from July 1, 1979-May 16, 1986. One data set contained 84,367 charges brought under the ADEA only ('pure'). A second data set contained 19,005 complaints brought under the ADEA and Title VII or the Equal Pay Act ('combined'). Several important findings are noted below.

The majority of complainants filing 'pure' ADEA charges have been male. This is consistent with the findings from the federal cases. These individuals are often limited to an age discrimination complaint to redress their grievances. Indeed, the majority of complainants filing 'combined' ADEA charges were female.

Females experienced more success than did males. in this instance, the goals of the ADEA may indeed be furthered by females particular place within Title VII legislation.

For both sexes, the majority of cases involved a termination action. This is contrary to the analysis of federal court cases which showed that most of the cases brought by females involved a job status issue.

Employers have succeeded in the vast majority of ADEA complaints. This may support the proposition that frequent litigators have advantages over less frequent litigators.

The majority of claims were filed by those in the 50-59 age group. However, the complainants experiencing the most success in their claims were in the 60-70 year bracket. Therefore, it appears that those most in need of protection, ages 50-59, are in fact failing in their claims most often.

Complainants experienced less success with more recent decision dates. This may be an indication that employers are adapting the 1981 EEOC age discrimination in employment guidelines.

State Findings

This research examined age discrimination complaints filed pursuant to eight state age discrimination in employment laws. The states included: New York, Wisconsin, Illinois, New Jersey, Nebraska, Connecticut, Georgia and Maryland. The results of the analysis of the operation and impact of these statutes are detailed in Chapters Six through Thirteen. A summary of the number of observations, time period covered and the independent variables for each state is shown in Table 48. The number of complaints ranged from 81 in the Georgia data set to 6439 in the New York data set. The complaint data sets cover a minimum of a three year period (Georgia) to a maximum of ten years (Wisconsin). All the data sets analyzed the challenged personnel action and case outcome. Other variables examined in one or more state data sets were: age, sex, race, education, occupation, union membership, industry and type of respondent. Several important findings are noted below.

State complainants have been predominantly white males. This is consistent with the findings from the federal cases. Again, such individuals are often limited to an age discrimination provision to redress their grievances.

In New Jersey and Nebraska, females experienced more success than did males. This is consistent with the experience of the federal cases. In contrast, in New York, males fared slightly better than females.

While the majority of age discrimination in employment claims in Wisconsin are filed by whites, nonwhites experienced more success. This raises the spectre of conflict between the goal of the age provisions and those of the Title VII-type provisions.

The majority of complaints involved discharge and complainants were least successful when the claim involved the more serious personnel actions. This is consistent with previous findings at the federal level. However, the Wisconsin experience indicated that workers were most successful when personnel actions involved termination.

The age group of the complainant had a significant impact on case outcome. Looking at those complainants 40-70 years only, the 60-70 age group experienced more success than other age groups. Therefore, it appears that those most in need of protection, ages 50-59, are in fact failing in their claims most often.

In New York, professional and managerial employees experienced more success than other occupational groups.

In contrast to the ADEA claim, more state complainants were non-professional employees. The greater ease and reduced costs of pursuing a state claim may permit less educated, lower paid workers to pursue their grievance. This highlights the importance state age discrimination laws and a state agency can have in protecting the rights of older workers.

Table 48

Summary of Currently Held State Data

State	Sample Size	Time Period	Independent Variables
New York	6439	Jan. 1976-Dec. 1982	Age, Sex, Race, Education, Occupation, Union Membership, Personnel Action.
Wisconsin	2565	Oct. 1973-Dec.1983	Age, Race, Industry, Personnel Action.
Illinois	478	July 1980-June 1986	Sex, Type of Respondent, Personnel Action.
New Jersey	341	May 1983-Nov. 1986	Sex, Industry, Personnel Action.
Nebraska	273	April 1980-Oct. 1983	Sex, Race, Age, Occupation, Personnel Action.
Connecticut	1241	July 1982-June, 1986	Sex, Industry, Personnel Action.
Georgia	81	Aug. 1983-Aug.1986	Personnel Action.
Maryland	446	Jan. 1981-Sept. 1985	Age, Race, Sex, Occupation, Union Membership, Industry, Personnel Action.

Employers were successful in the majority of state actions. Again, the experience employers have in legal proceedings may facilitate this success rate.

In Wisconsin, employers experienced considerably more success than employees at every stage of the agency process. In addition, conciliation and settlement was largely unsuccessful all along the complaint stage. This process is one of the prime reasons for the existence of agencies to deal with EEO claims and its nominal success rate may indicate that the aggrieved older worker in Wisconsin will find court litigation an attractive alternative to agency proceedings. If this is true, the Wisconsin law is not fulfilling its deferral role.

Organizational Retaliation: Wisconsin Survey Results

A survey was conducted to study the incidence, manner and degree of organizational retaliation experienced by older workers who filed age discrimination complaints with the State of Wisconsin Equal Rights Division. The results of the survey are presented in Chapter Fourteen. Some of the most notable findings are outline below.

Eighty-eight percent of respondents reported they were the target of retaliatory action by the employer against whom they filed. The retaliatory actions ranged from pressure to drop the suit to discharge from the organization. Twenty percent of the respondents experiencing retaliation were discharged from the organization.

The less supportive the complainant's co-workers then the more severe was the retaliation experienced by the complainant. Hostile co-workers were reported to be long-term employees in senior or supervisory positions to the complainant or reporting to the same supervisor. Hostile co-workers tended to be younger and male.

The incidence of retaliation increased with the level of managerial hostility. Respondents reported considerable levels of managerial hostility in response to filing the complaint.

Complainants whose cases were found by WERD to have merit suffered more comprehensive retaliation than did those whose cases were found to lack merit. One possible explanation is that the organization retaliates the most against whistleblowers who pose the most threat to the organization.

Future Research Issues

An outcome of this research was to identify several areas for further investigation. These constitute the basis for continued research by the investigators.

Continued monitoring of the ADEA over time to insure that full protection of older workers' rights. The research has compiled baseline information against which the future operation and impact of the ADEA can be judged. Monitoring the Act's performance over time would establish whether the objectives of ADEA are continuing to be fulfilled.

Continued assessment of the use of performance appraisal evidence in ADEA cases. It has become apparent that an employee's performance will determine the outcome in over 35 percent of ADEA litigation. Thus, it is essential to the purposes of the Act that court decisions continue to be assessed, for purposes of determining whether ADEA plaintiffs are having their performance evaluated by fair, well-structured appraisal systems.

The continued analysis of comparable data on conciliation efforts in ADEA claims which never reach the federal courts. Since the vast majority of age discrimination in employment complaints are resolved prior to the litigation stage, an analysis of federal court cases is in no way a complete assessment of the Act. Future research should investigate the nature and impact of conciliation efforts and administrative remedies at both the state and federal levels.

Assessing the outcome of ADEA litigation in different states and regions. Findings indicate that there may be a regional effect on the outcome of ADEA actions. The population of ADEA decision studied must be increased in order to more accurately measure their impact. Such an increase in case population will also permit the use of more sophisticated statistical techniques (for example, log linear modeling).

Further evaluation of state age discrimination in employment laws. It is evident from this research that a state age discrimination law, accompanied by an appropriate state enforcement agency can shoulder a major burden of age discrimination in employment complaints. It becomes important to assess whether these state mechanisms are fulfilling the objectives of the ADEA.

Expand the investigation on the issue of whether ADEA plaintiffs are competing for employment opportunities against the Title VII-protected workers. This question has significant implication for the enforcement policies of the EEOC and our nation's priorities in eliminating employment discrimination.

Assessing the enforcement policies of the EEOC and determining whether adjustments need to be made in light of regional variations. The differing impact states and regions may have on the filing and outcome of ADEA complaints needs to be viewed in terms of whether the limited enforcement resources of EEOC should be expended.

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APPENDIX A

AGE DISCRIMINATION ACT CASE ANALYSIS CODING FORM

____

Case Name and Full Reporter Citation

PART ONE: Demographic Information (circle the choice which is appropriate for the complainant(s) described in each case.

1. Sex:

   1) 1 male
   2) 1 female
   3) 2-4 males
   4) 5 and above males
   5) 2-4 females
   6) 5 and above females
   7) Other
   8) Other
   9) Unknown

2. Race:

   1) 1 white
   2) 1 black
   3) 1 'other'
   4) 2-4 whites
   5) and above whites
   6) 2-4 blacks
   7) and above blacks
   8) 2-4 'others'
   9) and above others
   10) Unknown

3. Religion:

   1) 1 Protestant
   2) 1 Catholic
   3) 1 Jew
   4) 1 'Other'
   5) Unknown
   6) 2 or more Protestants
   7) 2 or more Catholics
   8) 2 or more Jews
   9) 2 or more 'Others'

4. Age: (write in the age(s) of the complainant(s))

   A 1__________________
   A 2__________________
   A 3__________________
   A 4__________________
   A 5__________________
   A 6__________________
   A 7__________________
   A 8__________________

5. Occupation:

   1) 1 professional/managerial
   2) 1 blue collar
   3) 1 clerical
   4) 1 retail
   5) 2-4 professionals
   6) 5-8 professionals
   7) 2-4 blue collars
   8) 5-8 blue collars
   9) 2-4 clericals
   10) 4-8 clericals
   11) 2-4 retails
   12) 5-8 retails
   13) unknown number of professionals
   14) unknown number of blue collar
   15) unknown number of clerical
   16) unknown number of retail
   17) unknown professional and clerical
   18) unknown

6. Member of the Labor Union:

   1) Yes 2) No 3) Unknown

7. Employers' Financial Structure:

   1) family or individual
   2) corporation
   3) subsidiary of a large corporation
   4) government
   5) unknown
   6) association or union

8. Industry:

   1) public sector
   2) manufacturing
   3) utilities and transportation
   4) service
   5) food and agriculture
   6) construction
   7) other
   8) retail
   9) unknown

PART TWO: Case Processing

1. Geography: (court of appeals)

    1) 1st
    2) 2nd
    3) 3rd
    4) 4th
    5) 5th
    6) 6th
    7) 7th
    8) 8th
    9) 9th
    10) 10th
    11) D.C.
    12) 11th

2. Suit initiated by:

    1) individual
    2) government
    3) union
    4) unknown

3. Date of case reported: ____/____/____/

4. Court of last resolution:

    1) district court
    2) court of appeals
    3) supreme court
    4) unknown

5. Complaintant's legal representation:______________________________

6. Company's legal representation:______________________________

7. Name of the Judge:______________________________

PART THREE: Principal Issue (circle only one of the following):

1) hiring
2) promotion
3) demotion
4) transfer
5) discipline (insubordination/rule violation/other)
6) discipline (performance)
7) discharge (insubordination/rule violation/other)
8) discharge (performance)
9) compensation (wages)
10) compensation (fringe benefits)

PART THREE: Principal Issue (circle only one of the following)

11) compensation (services)
12) compensation (other)
13) safety
14) training
15) overtime
16) other hours of work
17) involuntary retirement
18) other ________________________________

PART THREE: The critical Factor (choose by key factor)

1) performance - upheld for employer
2) performance - denied for employer
3) discipline - upheld for employer
4) discipline - denied for employer
5) business necessity - jobs eliminated legally
6) business necessity - jobs eliminated illegally
7) retirement plan - bona fide
8) retirement plan - illegal
9) corporate policy - nondiscriminatory
10) corporate policy - discriminatory
11) bona-fide occupational qualification - legal
12) bona-fide occupational qualification - illegal
13) medical evidence - upheld for employer
14) medical evidence - denied for employer
15) other
16) unknown

PART THREE: Case Determination

1. Case Outcome:

    1) employer wins
    2) employee wins
    3) no decision
    4) unknown

2. Case Type:

    1) substance
    2) procedure
    3) both
    4) unknown

3. Readers: (write in appropriate name(s))

    1) ________________________________
    2) ________________________________
    3) ________________________________
    4) ________________________________
    5) ________________________________
    6) ________________________________

APPENDIX B

AGE DISCRIMINATION IN EMPLOYMENT ACT PERFORMANCE APPRAISAL CASES CODING FORM

FORM #_____

LEXIS #_____

CASE NAME

FULL REPORTER CITATION

YEAR CASE HEARD

COURT OF LAST RESOLUTION:

1. DISTRICT COURT
2. COURT OF APPEALS
3. SUPREME COURT
4. UNKNOWN

PERSONNEL ACTION THAT GAVE RISE TO THE ADEA COMPLAINT:

1. PROMOTION
2. LAYOFF/RETIREMENT
3. DISCHARGE
4. DISCIPLINE/DEMOTION
5. COMPENSATION
6. TRANSFER
7. OTHER (PLEASE SPECIFY)

DECISION REACHED BY THE COURT IN FAVOR OF:

1. PLAINTIFF (EMPLOYEE)
2. DEFENDANT (EMPLOYER)

TYPE OF ORGANIZATION OF THE DEFENDANT:

1. PUBLIC SECTOR
2. MANUFACTURING
3. UTILITIES AND TRANSPORTATION
4. SERVICE
5. FOOD AND AGRICULTURE
6. CONSTRUCTION
7. OTHER
8. RETAIL AND WHOLESALE
9. UNKNOWN

EMPLOYER'S FINANCIAL STRUCTURE:

1. FAMILY OR INDIVIDUAL BUSINESS
2. CORPORATION
3. SUBSIDIARY OF A LARGE CORPORATION
4. GOVERNMENT
5. NOT-FOR-PROFIT
6. UNKNOWN

GEOGRAPHICAL LOCATION OF THE DEFENDANT (INDICATE CIRCUIT COURT)

1. 1ST
2. 2ND
3. 3RD
4. 4TH
5. 5TH
6. 6TH
7. 7TH
8. 8TH
9. 9TH
10. 10TH
11. D.C.
12. 11TH

OCCUPATION OF THE COMPLAINANT:

1. PROFESSIONAL/MANAGERIAL
2. BLUE COLLAR
3. CLERICAL
4. RETAIL
5. UNKNOWN

MEMBER OF LABOR UNION: 1. YES 2. NO 3. UNKNOWN

FREQUENCY THAT APPRAISALS WERE CONDUCTED:

1. LESS THAN 3 MONTHS
2. LESS THAN SIX MONTHS
3. LESS THAN NINE MONTHS
4. ONCE A YEAR
5. LESS OFTEN THAN ONCE A YEAR
6. NO FORMAL APPRAISAL CONDUCTED

NUMBER OF EVALUATORS USED:

____

EVALUATORS GIVEN FORMAL TRAINING IN APPRAISING JOB PERFORMANCE:

1. YES
2. NO
3. UNKNOWN

RESULTS OF APPRAISALS REVIEWED WITH EMPLOYEES:

1. YES
2. NO
3. UNKNOWN

EVALUATORS GIVEN SPECIFIC WRITTEN INSTRUCTIONS ON HOW TO COMPLETE APPRAISALS:

1. YES
2. NO
3. UNKNOWN

AGE OF COMPLAINANT _______

AGE OF EVALUATOR _______

SEX OF THE COMPLAINTANT 1. MALE 2. FEMALE 3. UNKNOWN

PURPOSE OF APPRAISAL SYSTEM IN THE ORGANIZATION:

1. PROMOTION
2. SALARY INCREASES
3. EMPLOYEE GROWTH AND DEVELOPMENT
4. LAYOFF/TRANSFER
5. OTHER

JOB ANALYSIS USED TO DEVELOP THE APPRAISAL SYSTEM:

1. YES
2. NO
3. UNKNOWN

TYPE OF CHARACTERISTICS USED IN APPRAISAL SYSTEM:

1. TRAIT-ORIENTED
2. BEHAVIOR-ORIENTED
3. UNKNOWN

TYPE OF EVALUATION METHOD USED:

1. GRAPHIC RATING SCALES
2. EMPLOYEE COMPARISONS
3. CHECKLISTS
4. FREE FORM ESSAYS
5. CRITICAL INCIDENTS (BARS)
6. INFORMAL SUPERVISORS EVALUATION
7. OTHER

VALIDITY INFORMATION PRESENTED ON THE APPRAISAL SYSTEM:

1. YES
2. NO
3. UNKNOWN

RELIABILITY INFORMATION PRESENTED ON THE APPRAISAL SYSTEM:

1. YES 2. NO 3. UNKNOWN

PREDOMINANT RACE OF THE EVALUATORS GIVING APPRAISALS:

1. WHITE
2. NONWHITE
3. UNKNOWN

PREDOMINANT SEX OF THE EVALUATORS GIVING APPRAISALS

1. MALE 2. FEMALE 3. UNKNOWN

DESCRIPTION OF THE TYPE OF PERFORMANCE EVIDENCE:

REASONING OF THE COURT (USE ADDITIONAL SHEETS IF NECESSARY)

APPENDIX C

ORGANIZATIONAL RETALIATION SURVEY

QUESTIONNAIRE

Impacts of the Age Discrimination in Employment Act on Complaints

Responses to this questionnaire will be used in research being conducted to determine the effectiveness of the Age Discrimination in Employment Act. Questionnaires have been numbered for statistical purposes only. All responses will be handled on an anonymous basis and complete confidentiality of the respondents will be maintained (Numbers in parentheses at the end of each question are for computer use and can be ignored)

I. Background

A What is your race?

1. __________ White
2. __________ Black
3. __________ American Indian/Alaskan Native
4. __________ Hispanic
5. __________ Asian Pacific Islander
6. __________ Other (14)

B What is your sex?

1. __________ male
2. __________ female (15)

C. What was your age at the time you filed your charge? __________ (16)

D. What is the highest grade of school you have completed? __________ (17)

E. Was the Wisconsin Equal Rights Division (WERD) resolution of your charge satisfactory to you?

1. __________ Yes
2. __________ No (18)

F. Did your charge result in litigation (a law suit being filed in a federal court?)

1. __________ Yes
2. __________ No (19)

G. The Age Discrimination in Employment Act (ADEA) also seeks to protect people who file charges from retaliation. In this regard did you file a charge because:

1. __________ You were discriminated against after you opposed employment practices made unlawful by the ADEA.
2. __________ You were discriminated against after you filed a charge under ADEA.
3. __________ You were discriminated against after you participated in an investigation, hearing, or proceeding under the ADEA.
4. __________ None of the above applies. I did not file a charge because of retaliation for other ADEA activities. (20)

H. What was your occupation at the time you submitted your age discrimination charge? ______________________________ (21)

If your case did *not* result in litigation, please skip the questions in the rest of *Part I* and go on to *Part II* below.

I. Who filed *the law suit?*

1. __________ WERD
2. __________ myself
3. __________ WERD, but I was represented by my own private attorney. (22)

J. When did the court suit end?

1. ______________________________ (month, year)
2. __________ not yet ended (23-26)

K. What was the outcome of your case?

1. __________ Case is still being litigated (not yet ended)
2. __________ Case was dismissed
3. __________ Case was settled during course of litigation
4. __________ Defendant won
5. __________ Plaintiff won (27)

L. Was the outcome of the court case satisfactory to you?

1. __________ Yes
2. __________ No (28)

II. Impact on co-workers of your filing an age discrimination charge or complaint.

These questions are based on assumptions that may not be appropriate in your case. Please answer those questions you think are appropriate to your case and skip those you think are not.

A. Which of the following statements describes your case?

1. __________ I continued to work for the employer against whom charges were made and co-workers learned of my discrimination charge.
2. __________ I continued to work for the employer against whom charges were made and co-workers did *not* learn of my discrimination charge.
3. __________ I did not work for the employer against whom discrimination charges were filed.
4. __________ I filed the discrimination charge against a labor organization or employment agency.
5. __________ Other (describe) ______________________________ (29)

B. In general, how would you describe the reaction of your co-workers?

1. __________ very supportive
2. __________ moderately supportive
3. __________ no change in how they treated me
4. __________ gave me the "cold shoulder"
5. __________ moderately hostile
6. __________ extremely hostile
7. __________ other (please describe) ________________________ (30)

C. How many of your co-workers were supportive of you?

1. __________ none
2. __________ only those also directly involved in the discrimination charge
3. __________ few
4. __________ many
5. __________ most
6. __________ all (31)

D. How would you generally describe the co-workers who were supportive of you? (Check all that apply.)

1. __________ there were no characteristics common to people who were supportive
2. __________ male
3. __________ older
4. __________ recently employed by firm
5. __________ in a more senior position than mine
6. __________ supervise me
7. __________ conservative
8. __________ at least some college education
9. __________ do jobs entirely different from mine
10. __________ report to same supervisor
11. __________ report to another supervisor

12. __________ female
13. __________ younger
14. __________ long-term employee of firm
15. __________ in an equal or less senior position than mine
16. __________ I supervise them
17. __________ no supervisory relationship
18. __________ liberal
19. __________ no college education
20. __________ do jobs similar to mine
21. __________ other (please describe) ____________________ (32-38)

E. How many of your co-workers were hostile toward you?

1. __________ none
2. __________ one or two
3. __________ few
4. __________ many
5. __________ most
6. __________ all (39)

F. How would you generally describe those co-workers who were hostile? (Check all that apply.)

1. __________ there were no characteristics common to people who were hostile
2. __________ male
3. __________ older
4. __________ recently employed by firm
5. __________ in a more senior position than mine
6. __________ supervise me
7. __________ conservative
8. __________ at least some college education
9. __________ do jobs entirely different from mine
10. __________ report to same supervisor
11. __________ report to another supervisor
12. __________ female
13. __________ younger
14. __________ long-term employee of firm
15. __________ in an equal or less senior position than mine
16. __________ I supervise them
17. __________ no supervisory relationship
18. __________ liberal
19. __________ no college education
20. __________ do jobs similar to mine
21. __________ other (please describe) ____________________ (40-45)

G. If you found a negative attitude among co-workers toward you and your age discrimination charge, how was it manifested?

1. __________ stopped talking
2. __________ stopped lunch
3. __________ stated disapproval
4. __________ business
5. __________ social
6. __________ supervisor
7. __________ other (46)

III. Reaction of management to your filing an ADEA complaint.

These questions are based on assumptions that may not be appropriate in your case. Please answer those questions you think are appropriate to your case and skip those you think are not.

The term "management" covers a lot of supervisory positions. For clarity in assessing the response of persons at various levels of management, we will assume there are three categories of managers: *top management*, which carries out general policy-making functions — e.g., corporate president, chairperson of a board of directors; *middle management*, which carries out day-to-day responsibility for operations of the business — e.g., head of your department, and *supervisors* — e.g., your boss.

A. Did any of these things ever happen to you because of filing an age discrimination charge? (Check all that apply.)

1. __________ excluded from staff meetings you previously attended
2. __________ lost certain perquisites previously enjoyed (telephone, special desk, office, parking privileges, use of company credit cards, etc.
3. __________ received less desirable work assignments than previously
4. __________ received more work assignments, heavier work load than previously
5. __________ work was more stringently criticized than
6. __________ pressured to drop suit
7. __________ transferred
8. __________ demoted
9. __________ discharged
10. __________ other (please describe) ____________________
11. __________ nothing happened (47-52)

B. In general, how would you describe the reaction of *top* management to the suit? (Check all that apply.)

1. ________ disbelief or surprise that anyone would charge them of having discriminated on the basis of age.
2. ________ belief that their employment practices were, in fact, not discriminatory
3. ________ anger at you
4. ________ acknowledgment that employment practices were discriminatory, but anger at having to change established practices.
5. ________ anger at the potential cost to the business, institution, or agency (e.g., back pay awards attorney's fees, etc.)
6. ________ fear that they would be required to implement an affirmative action plan and unwillingness to do so
7. ________ willingness to reassess employment practices and correct discriminatory practices
8. ________ other (describe) ____________________ (53)

C. In general, how would you describe the reaction of *top* management toward you?

1. ________ openly hostile
2. ________ cold but not openly hostile
3. ________ no change in their usual reaction
4. ________ friendly and cooperative
5. ________ I have no direct contact with these people
6. ________ other (please describe) ____________________ (54)

D. In general, how would you describe the reaction of *middle* management (Check all that apply.)

1. ________ disbelief that anyone would charge them of having discriminated on the basis of age.
2. ________ belief that their employment practices were, in fact, not discriminatory
3. ________ anger at you
4. ________ acknowledge that employment practices were discriminatory but anger at having to change established practices.
5. ________ anger at the potential cost of the complaint (e.g., back pay awards, attorney's fees, etc.)
6. ________ fear that they would be required to implement an affirmative action plan and unwillingness to do so
7. ________ willingness to reassess employment practices and correct discriminatory practices
8. ________ other (describe) ____________________ (55)

E. In general, how would you describe the reaction of *middle* management toward you?

1. __________ openly hostile
2. __________ cold but not openly hostile
3. __________ no change in their usual reaction
4. __________ friendly and cooperative
5. __________ I have no direct contact with these people
6. __________ other (please describe) ______________________ (56)

F. In general, how would you describe the reaction of your supervisor?

1. __________ disbelief that anyone would charge him/her of having discriminated on the basis of age
2. __________ belief that their employment practices were, in fact, not discriminatory
3. __________ anger at you
4. __________ acknowledge that employment practices were discriminatory, but anger at having to change established practices
5. __________ anger at the potential costs of the complaint (e.g., back pay awards, attorney's fees, etc.)
6. __________ fear that they might be required to implement an affirmative action plan and unwillingness to do so
7. __________ willingness to reassess employment practices and correct discriminatory practices
8. __________ other (describe) ______________________ (57)

G. In general, how would you describe the reaction of your supervisor toward you?

1. __________ openly hostile
2. __________ cold but not openly hostile
3. __________ no change in usual reaction
4. __________ friendly and cooperative
5. __________ I have no direct contact with supervisor
6. __________ other (please describe) ______________________ (58)

IV Career Impacts

A. Are you presently employed by the employer against whom you filed the complaint?

1. __________ Yes
2. __________ No (59)

B. If you are not, when did you leave that employer?

1. __________ before the complaint was filed
2. __________ immediately after the complaint was filed
3 __________ after the dispute was resolved through conciliation
4. __________ before litigation commenced
5. __________ after litigation was completed
6. __________ other (describe) ______________________________ (60)

C. Does your *new* (present) employer know about the complaints?

1. __________ Yes
2. __________ No
3. __________ not presently employed (61)

D If your present employer knows you filed a complaint, has this affected your new (present) employer's attitude toward you?

1. __________ Yes
2. __________ No (62)

E. Do you anticipate that this will hurt your career with your new employer?

1. __________ Yes
2. __________ No

How? (63)

F. If you are employed by the employer against whom you filed, do you plan to stay and develop a career there?

1. __________ Yes
2. __________ No (65-64)

G. What impact on your position in the business, institution, or agency against which you filed has the suit had? (Mark all that apply.)

1. __________ I am still in the same position with the same responsibilities
2 __________ My responsibilities have increased
3. __________ My responsibilities have decreased
4 __________ I have been promoted and expect to continue to "progress" in the company
5 __________ I have been promoted but don't expect to be able to successfully pursue a long-term career in the company
6 __________ I received a salary increase and expect to continue to receive increases based on my performance.
7 __________ I received a salary increase but don't expect that my salary will continue to rise.
8 __________ Training opportunities have opened up for me
9 __________ Training opportunities have not opened up for me
10 __________ None of the above.

______________________________ (67-77)

H. Were you given a chance to gain the promotion or advancement?

1. __________ Yes
2. __________ No (76)

I. Did you gain the promotion or advancement?

1. __________ Yes
2. __________ No (77)

J. If you did not, do you believe that you would have, had you not filed the complaint?

1. __________ Yes
2. __________ No (215)

K. Did you feel that the procedures or criteria used to determine who got the promotion were fair?

1. __________ Yes
2. __________ No (216)

L. Do you think that you will gain further advancement with this firm?

1. __________ Yes
2. __________ No (217)

M. Have you received a salary increase since you filed the complaint?

1. __________ Yes
2. __________ No (218)

N. Was this because you filed the complaint?

1. __________ Yes
2. __________ No (219)

O. If filing the complaint has had an impact on your salary, do you think that impact will continue?

1. __________ Yes
2. __________ No (220)

P. Has filing this complaint affected your opportunities for long-term career development with the business, institution, or agency against which you filed?

1. __________ Yes
2. __________ No (221)

Q. Based on your assessment of reaction to your discrimination charge, if you needed a recommendation for a new job, would you ask for it from anyone in the business, institution, or agency against which you filed?

1. __________ Yes
2 __________ No (222)

R. In terms of your career in general, not necessarily with any particular employer, do you think your having filed has had a positive or negative impact on your career in the long run?

1. __________ Positive
2. __________ Negative (223)

S. If your complaint was filed against a labor union, has your having filed affected your long-term career?

1. __________ Yes
2. __________ No
3. __________ Not Applicable (224)

T. Has this experience changed your career goals in any way? Please explain your answer. Attach additional pages as needed.

1. __________ Yes
2. __________ No (225)

V. Effectiveness of the ADEA Remedy

A. If there was a formal settlement of your complaint (either through WERD negotiation/conciliation or as a result of litigation), how completely has it been complied with by the business, institution, or agency against whom you charged discrimination.

1 __________ It has been followed to the letter.
2 __________ It has not been followed in all details, but generally has been complied with.
3 __________ It has been followed, but reluctantly
4 __________ It has only been halfheartedly complied with, and older workers feel they must stay on their toes to ensure compliance.
5 __________ It has not been followed at all.
6 __________ The specific problems complained of have been remedied, but the positions of other older workers in general or in other segments of the business, institution, agency, union, etc., have not changed.
7 __________ Other (please describe) ____________________ (226)

B. What was the overall benefit, if any, of your having used the ADEA remedies.

1. __________ not of any benefit
2. __________ some benefit
3. __________ fairly beneficial
4. __________ very beneficial
5. __________ extremely beneficial (227)

C. Has anyone besides yourself benefited from this? (Check all that apply.)

1. __________ Others not involved in the complaint have benefited more than I have in terms of promotion, salary, or training opportunities.
2. __________ Others not involved in the complaint have benefited as much as I have.
3. __________ Others not involved in the complaint have benefited, but less than I have.
4. __________ New persons just beginning careers with the firm, institution, or agency have been the real beneficiaries.
5. __________ Other middle aged employees have benefited.
6. __________ Other describe (228)

D. Would you advise another person to file a complaint under ADEA alleging age discrimination?

1. __________ Yes
2. __________ No
3. __________ Would depend on the particular case. (229)

E. If you had to make the same decision again, would you file an age discrimination complaint?

1. __________ Yes
2. __________ No (230)

F. How effective do you think this method of ending discriminatory employment practices is? Attach additional pages as needed.

1. __________ not effective at all
2. __________ not very effective
3. __________ neutral
4. __________ fairly effective
5. __________ very effective (231)

G. What changes would you make in the remedies available to combat discriminatory employment practices? Please explain your answer. Attach additional pages as needed. (232)

H. What do you think of the way WERD handles age discrimination complaints and its effectiveness? Please explain your answer. Attach additional pages as needed.

1. __________ not effective at all
2. __________ not very effective
3. __________ neutral
4. __________ fairly effective
5. __________ very effective (233)

I. Please feel free to comment on your experience as you see fit. Attach additional pages as needed.

APPENDIX D

ORGANIZATIONAL RETALIATION SURVEY
RESPONDENTS COMMENTS

RESPONDENT # 7601085:

COMMENTS:

1. I started working for this employer May 23, 1949. Employer was then known as Nennak Hardwood Products Co. President of Nennak Hardwood Products was Dan Kimberly.
2. Dan Kimberly passed away February, 1954. His son-in-law, Hubert Des-Marias became President of the company. He was not a business man and therefore could not make the company survive. He, therefore, took his own life, with whiskey and sleeping pills, in June 1965. In short, he committed suicide.
3. Then in approximately September of 1965, Eggers Plywood Veneer Co. of Two Rivers Wisconsin, purchased the former Nennak Hardwood Products. They then, were interested only in profit and high production and quality was no longer a concern. Also, they stopped making Soundproof Doors and Special Order Doors. By Special Orders, I mean some doors that were 6 feet wide and 24 feet 8 inches long. They were used for Gym dividers and slid on Tracks. Most of these doors went to a contractor in New York state, by the name of Roof Structures, Inc.
4. I was fired by Eggers in January 1979. I refused to fill out any more efficiency reports, because they were only another way for management to harass me. So, as you may have noticed, I have spent a large amount of time on this

RESPONDENT # 7601085: (continued)

matter and I hope it will be of great interest to Syracuse University in their study on problems that arise with some greedy employers.

I again will repeat what I have stated before in the Questionnaire. And that is "The Wisconsin Department of Industry, Labor, and Human Relations, is the very last place that would seek aid in my case with the former employer for whom I worked 30 years."

To me it appeared that all the dealing which I had with them, the facts which I stated always fell on deaf ears, and the lies stated by Eggers Indus-tries, were what they listened to and based all their findings on.

I also wish to repeat again that "if I had it to do over again I would hire my own self a Labor Lawyer, and even take the case to the United States Supreme Court, because I now know that my Constitution Rights were violated by Eggers Industries."

"I work my farm now and live on a Poverty Income."

COPY OF LETTER TO TOM PETRI, (6th Congressional District) Wash. D.C. Dear Mr. Petri,

Received your letter, glad to have you answer it. I agree with you that there is nothing you are able to do under the circumstances.

Dealing with Eggers Industries is very difficult, if not even impossible, because they do not hesitate to employ any unethical ploys or tricks to promote their interest.

RESPONDENT # 7601085: (continued)

1. In my case it was lie after lie stacked upon more lies.

2. Constant harassment, such as statements; a. You are too slow. b. You have a bad odor. c. You are too carless in your work.

3. And placing me on jobs which were far less desirable and difficult, even cutting my wages. This they did by saying the job I was on was being eliminated, and it was the only job I qualified for.

4. By instituting a company efficiency system. This efficiency system was very unfair on the part of some employees.

Best example of this was: Jim Schoenholy - a young employee worked on a door sanding machine a short distance from the sanding machine I worked on. His efficiency was at a high of 118%. Mine at usually 62 to 68%. However, I was able to see what was all included in his manner of working. He did very sloppy work, even found time to play tricks on other employees.

Our efficiency ratings were given to us each week by the department supervisor, so one day I asked the supervisor if he actually believed Jim Schoenholy rating of 118%. He said to me - no, I don't believe the lieing bastard. But far be it from me to open my mouth and say so, since his old man is one of the time study technicians, or efficiency engineers, as they referred to by management.

Eggers Industries at that time had 2 of these Time Study Technicians;

RESPONDENT # 7601085: (continued)

a. Ervin Schoenholy and b. Eugene Arnoldussen.

This is a rewrite of a copy of a letter which I sent to mr Petri in about 1979 or 80.

RESPONDENT # 7800198:

COMMENTS:

This action was in the courts for 7 years, and then was dismissed due to technicality in the law, which occurred in 1982. Dismissal was January 1984.

COMMENTS:

I feel this entire age discrimination case was a very traumatic experi-ence for me. When I filed my complaint I was of the opinion that the state and federal agencies were there to help me resolve my problem. Little did I know that most of the burden was going to be on me. I had no idea that it would take almost seven years for me to end up with no solution to my complaint and no further employment. I was not ready to retire but I had no other choice.

The company has an overall advantage over the common ordinary person because they can hire the best attorneys to solve their discriminations. Attorneys will take various civil cases, accident cases, etc. on contingency basis but will not take age discrimination cases on those basis so a person is at a disadvantage. The hearing for the state was the most humiliating experience I had in my entire life. The managers who praised my

RESPONDENT # 7805672: (continued)

work while I worked for them condemned my work at the hearing and had nothing good to say about me.

Immediately after my experience with the state I was involved with the Equal Employment Opportunity Commission who ave me the right to sue in Federal Court. At this point I had to hire a lawyer to pursue my case in Federal Court. This lawyer was of no benefit to me because after a year from filing my case in Federal Court, my case was dismissed because the judge ruled it untimely. I tried every possible avenue but ended up with almost seven years of grief and several hundred dollars of lawyers fees and court costs and what I feel a denial of my rights under the age discrimination law.

RESPONDENT # 7900053:

COMMENTS:

At one point in time the firm offered me a settlement out of court - but I refused and went to court. Perhaps I should have taken it - but if it helps other older employees, I'm satisfied.

I worked for that firm for 10 years.

RESPONDENT # 7900422.

COMMENTS:

I believe I can best explain my situation in my own words.

I had worked for the company 15 years as sales clerk, became supervisor and had recently asked to get week-ends off. Knowing I could not be supervisor and have week-ends off that was

RESPONDENT # 7900422 (continued)

arranged. Several months later I was back working week-ends. Then my hours were cut to approximately 12 - 15 hours a week - one week 4 hours. I begged to know why. The managers said my work was fine, they just needed to give the new young girls more hours for experience. I was nearing retirement age and I'm sure they were hoping I'd quit so the Co. wouldn't have to pay me a pension. I was very unhappy and did resign several weeks later. This was six years ago and I'm still unhappy about it. Sorry I didn't have better results with E.R.D.

RESPONDENT # 7905831:

COMMENTS:

If everyone who files a discrimination suit would get the kind of treat-ment I was subjected to I do not believe there would be many suits. It is time consuming, expensive (trips to Milwaukee), and thoroughly degrading.

I worked for three brothers who ridiculed their brother-in-law when he turned 40. In 3½ years I was subjected to ridicule and embarrassment on numerous occasions when younger employees (male and female) were given things or I was ordered to do things for them. The company paid for schooling, parties, lunches, etc., for the younger employees and I was ridiculed if I said anything or asked for anything. I was ordered to give up my vacation for a younger girl. The first year I did, the second year I refused and was told if I did not back up and give her that vacation time I would be fired. I declined changing my

RESPONDENT # 7905831: (continued)

vacation as I had a trip planned and I was fired. After several trips to the Milwaukee office where I was treated very shabbily and all information given was slanted in the favor of the Employer, one of the Carpenter Contractors called me and said they were going to smear me in court. I then cancelled the case.

The whole affair was extremely degrading.

RESPONDENT # 8000084:

COMMENTS:

My first attorney permitted the Federal Statute of Limitations to expire. We then had access only to WERD. Here, after only one day of administrative hearing, the examiner seemed far more anxious to get the case out of the way than to hear the facts and make an equitable ruling. He indicated that he could not even consider a ruling of the size we were asking as compensation. This was after the Wisconsin Department had determined that there was probable cause for my complaint.

I feel that only a Federal Court Hearing would have given me a favorable and appropriate judgement. Such remedies seemed beyond the capacity (or willingness) of the WERD.

RESPONDENT # 8000118:

COMMENTS:

Some of the questions I couldn't answer because it is too short of a time to tell the outcome. I filed an Age Discrimination (and Sex) July 23, 1983. June 3, 1985, I

REPONSDENT # 8000118: (continued)

scheduled to go before the Personnel Commission. I did not have an attorney because at $80.00 and up who can afford one. A law student helped me prepare for the hearing that was $20.00 an hour. I settled for much of nothing. After two years and no support I was ready to give up anyway.

Anyone that trys to fight the system one as big as the University of Wisconsin, is just plain nuts. Never would I do it over. The only person that treated me civil was the Commission that listened to our arguments in the settlement.

If you want me to fill out any more questionnaires later, I will be happy to.

RESPONDENT # 8000282:

COMMENTS:

The same disloyalty is occurring now with the high school principal.

RESPONDENT # 8000303:

COMMENTS:

My complaint was age discrimination in promotions - passed up for younger employee and was told 'you are too dam' old'.

RESPONDENT # 8000426:

COMMENTS:

Too many delays in action and too long to get decision after hearing; nearly 9 months.

RESPONDENT # 8000436:

COMMENTS:

I was laid off at 59 years old because of my age and a younger employee was put in my place who worked there for nine months, but was a friend of the boss's son. I had ten years at the dealership and he had a total of nine months. I also was the best producer on the used car lot of all the salesman working at the dealership.

I could not find a job at 59 years old but worked a seven month job for the city of Two Rivers at $3.35 per hour until I retired at age 62.

I thought I was really discriminated against because of my age when I was laid off at 59 years old.

RESPONDENT # 8001058:

COMMENTS:

WERD found probable discrimination. Suit filed in Federal Court. Wis. suit not considered nor was WERD action because of weak law and obvious past reluctance of government and courts (state, especially) to rule against news media.

RESPONDENT # 8001087:

COMMENTS:

I believe that the attorney handling discrimination complaints was very reticent to prosecute an employer. He told me, after receiving the employer's response, that he could not see grounds for prosecution. I felt he should have been able to recognize the responses as "whitewash." The employer quoted my

RESPONDENT # 8001087: (continued)

co-worker as saying that she hadn't felt there had been any discrimination toward me, which was a complete reversal of what she had told me personally before my filing the complaint.

And incidentally, I never discussed the filing with her either before or after. Our discussion had merely been about the general work situation, and she had initiated the discussion.

Just now I read the report given by the attorney to the federal office in Milwaukee, and I note that the discrimination charge is not exactly as I state it. No mention is made of the appointment of someone else in any other editorial position that that might become available, The report sounds as if it was my fear of being fired that was my complaint.

RESPONDENT # 8001255:

COMMENTS:

Management appears to have the upper hand. Management gets away with too much underhanded methods. Have lawyers to instruct them what to say to investigators. Appears that the one that filed really does not know what's going on. How could management do something like discriminate on age.

Just this year I very strongly urged to retire early because of my age. I was told I was the oldest staff member. Why not throw in the sponge and quit!

RESPONDENT # 8001606:

COMMENTS:

Synopsis of my case:

Person A (me) were waiting for a promotion with equal qualifications. Person B Person B was to receive the next promotion. Both promotions were equal.

The company promoted someone else. Person A never found out about it; Person B did and filed a complaint on race and sex with Federal government.

Federal government forced company to promote Person B as a result of the complaint.

When Person B got promoted Person A found out and questioned it as Person A should have been promoted before Person B.

Person A was told Person B got promotion due to discrimination suit. Company had no control.

Person A filed suit - Company also promoted Person A six to eight months later.

The company did more to help make things right for Person A than did the EEOC.

RESPONDENT # 8001683:

COMMENTS:

No one should file any claim unless represented by an attorney.

RESPONDENT # 8001915:

COMMENTS:

I called someone at the EEOC office in Wausaw, I believe. It was about six months after I had been working at Milprint. I thought they could use a little positive input. I am very very happy that I filed the discrimination suit. It probably was the best thing I have ever done and I got the most help from Anna Schultz. I couldn't have asked for anyone to work harder than she did. She went through a lot and put in many hours. Thank you again.

RESPONDENT # 8005124:

COMMENTS:

My first hearing with WERD was a full day's hearing at the state office building in downtown Milwaukee.

RESPONDENT # 8005124: (continued)

I won on 4 separate counts: Age, handicap, retaliation and failure to hire the first time I applied. The State Hearing Examiner was very, very sharp.

The second hearing, a year later, a young woman examiner threw out my case on applied without a hearing and just summarily dismissed the case!! The reason is: most hearing examiners leave to go into private practice or with a major law firm. She wanted to "gain points" and not jeopardize her future with my opponent, Michael Best & Co., so she summarily ruled in their favor.

RESPONDENT # 8005158:

COMMENTS:

Cold and indifferent regarding other factors which affected the outcome of the case.

My husband was diagnosed as having terminal cancer and was given less than 3 months to live. They were reluctant to show understanding to outside factors. Therefore, the lawyer fee payment was accepted, because it became impossible to continue the case. Needed depositions could not be taken and legal procedures could not be held due to my husbands terminal illness.

I still feel very strongly that my case was unsuccessfully concluded because my lawyer pressured me into accepting a settlement that I did not want and he would not ask for an extention of time due to my husbands condition.

RESPONDENT # 8005223:

COMMENTS:

I was unemployed at the time I answered their ad for guards. I filled out their application and at the same time I and a young fellow walked up to hand it to the girl, she said to him there was another job he should apply for; to me she said, 'we will call you if we need you.' I definitely felt this was a case of screening and that is why I filled out my grievance. I waited a long time for a reply and when it came I already had moved to Arizona as there was nothing to hold me in Milwaukee. They told me if I did want to fight their verdict I should come back to Milwaukee to do this. I felt as I had before it was of

RESPONDENT # 8005223: (continued)

no use. I would never get a just verdict from them. You can use this anyway you wish as these are my feelings and I don't care who knows it.

RESPONDENT # 8005515:

COMMENTS:

We (the Company) decided to put in a computer.

We all helped enter the product line, but there it stopped. The younger ones up front were shown how to operate the computer. I was shown in a haphazard way and told by word of mouth. I was assigned to enter our branch office invoices in the computer, but when I would start some invoices, my computer would be shut down automatically in the middle of an invoice. These invoices then could not be recalled. They said my work was terrible, but they didn't say anything about it being the front offices fault and that's the reason they gave for laying me off.

RESPONDENT # 8051509:

COMMENTS:

My supervisor said he and middle management were of the opinion that I had reached the end of my capabilities - this is in the record of the union grievance filed. The personal file on me that was kept by the Co., only held minor complaints and was stripped of other reports on my work from different departments that I know had been made. The close decision by the

RESPONDENT # 80051509: (continued)

arbitrator ruled that the Co. had the right to determine who should be promoted.

RESPONDENT # 8051512:

COMMENTS:

I believe the suit was the cause for my "early retirement." Although settled fairly satisfactorily and amicably with the manager, promotional opportunities ceased. The manager soon transferred out and I was at the mercy of the Personnel Manager's decisions. Although I complained about the bad situation perhaps it would have been better to play a low profile.

Note: I've been employed for 4 years now as a secretary at another company after 'early retirement'.

RESPONDENT # 8051623:

COMMENTS:

Having worked for 29 years in the freight business and having some college courses in transportation and traffic, I feel I was as well or better qualified for the job applied as anyone, yet I was refused employment and I am convinced age was the cause.

RESPONDENT # 8051730:

COMMENTS:

WERD is just really not and cannot be interested since they seem to be much too busy to settle down and really apply themselves..at least that's my experience! Also-too many people

RESPONDENT # 8051730: (conintued)

for me to have to re-explain my case to. Not one person seemed to know all the facts and stay with it to reach a solution! Thanks for letting me convey my thoughts to your research! Good luck with it. May good things come out of the time & effort all will put into this!

RESPONDENT # 8102116:

COMMENTS:

Why don't some one do something about this?

Seems to be more in favor of the employer at all stages of procedings than the employee.

RESPONDENT # 8102426:

COMMENTS:

I had long doubted that anyone ever did anything other than "File 13" our complaints.

My situation is unusual in the instance of filing a suit inasmuch as the people against whom I initiated a complaint are my friends and the people who render services as well. You will find such overlapping situations occur when you deal with the elderly. Please bear in mind that rather than being plus 45, I am plus 60 years of age. The is that "They" won a suit and I lost.

My situation is further unusual since I am a disabled Senior Citizen, once retired, who went to the University of Wisconsin, pursued a bachelor degree, and am pursuing a master degree.

RESPONDENT # 8102426: (continued)

As a matter of pride and better income, as well, I would have loved and still would like suitable employment. Obviously I cannot stack rocks, but since I do have a good employment record, I would be an excellent organization person. I am a more desirable employee now than I was formerly, since I am better credentialed. Therefore, I must say my goals and aspirations remain the same.

As to my attitude, since I work on subsidized employment, a condition of employment is that such workers seek un-subsidized employment. Considering the pay scale, most such employees have a built-in incentive.

When I filed the complaint, it was because I had answered an ad for a specific position for which I do qualify. As I remember the response to my request for an application form came after the closing for competition. I felt the oversight had been deliberate. The personnel office personnel were as discourteous as it is possible to be short of breaking the law.

At the start of my complaint filing, a lady in the Schofield, Wisconsin office was extremely supportive of my complaint. Suddenly, and much later, a man from an Eau Claire, Wisconsin office told me I had absolutely no case----after I had been led to believe my case was solid. This man took on a tone of ridicule toward me. I never knew why---until many months later---one of the qualifications the successful competitor had was to be the daughter of a local judge and the daughter-in-law of the

RESPONDENT # 8102426: (continued)

operators of a local medical clinic. Such qualifications I cannot match. I am only the age 60 plus daughter of an ex-teacher and farmer who was born in 1875---gone far too long to be useful.

My own feelings are that at age 60 plus, people should be permitted to retire with no social or economic penalty if they wish. However, those persons both above and below sixty years of age should be assured of employment. There are many meaningful tasks which need the doing. Those of us who are above 60 should be assured of employment compatible with our skills. We would not likely ever impose great numbers on the labor market in any case, and those of us who are fortunate enough not to be in a state of mental deterioration have a particular talent for relating experience to tasks at hand which can and should be developed. Young people thought nothing of giving a 72 year old man the highest "job" in the land. Is it unthinkable that the rest of us have a bit of skill remaining?

There is a practice which operates now which needs to be examined and probably discontinued. Positions which are available in this state must be advertised and five persons interviewed. It is possible for a person to develop a position creatively, be tentatively hired, next the job is advertised for interview and competition; this means that the four dummy interviews have been used as a legal screen, and those sincere but unsuccessful applicants have been taken for fools. I do not

RESPONDENT # 8102426: (continued)

wish to file a complaint since I am not involved, but it seems terribly unfair. For example, in this state an applicant can easily be called to interview in Milwaukee, Wisconsin, who actually lives in Superior, Wisconsin---a considerable effort for a non--existent job, wouldn't you say?

Obviously, in my instance, WERD was ineffective. I believe that if a publicity worthy situation would arise, these people could and would move effectively.

The gentlemen who was unwilling to handle my complaint informed me that I could hire a lawyer at my own expense---but, only after I protested his treatment of me. Had I felt I had sufficient finances to hire a lawyer, I would not have gone through WERD.

RESPONDENT # 8102790:

COMMENTS:

They helped me get started which I appreciate, and then when the ball start to work - it seems in court they favored business more than the individual.

RESPONDENT # 8104217:

COMMENTS:

The company has a bevy of lawyers on retainer. I do not! Also the WERD doesn't have enough help. The case is backlogged too many years. Both the company and WERD drag out the case so that after a couple years you get disgusted and quit the whole mess. I feel that that when a persons career and income are in

RESPONDENT # 8104217: (continued)

jeopardy - there should be a faster way of dealing with the case.

RESPONDENT # 8124008:

COMMENTS:

For years I had gotten salary increases in January of each year. The year of my retirement (1978) when the Company knew I was retiring in March I did not receive an increase. I felt I was being discriminated against because of my age and approaching retirement. The amount of money I was seeking was relatively small (3 months' increase, January-Marcy 1978) but it would also affect my social security and life insurance.

I then filed a complaint with the Union followed by an ADEA complaint later. Since the Company was to have a legal representation at the ADEA hearing, I engaged a lawyer to represent me.

The ADEA ruling was in my favor. However, the Company decided to appeal.

Just before the case was scheduled for the second hearing, the Company was willing to settle and suggested we meet to "talk things over" in their offices. By mutual agreement I got the amount of money I was seeking for salary increase, but had hoped for some remuneration for my lawyer's fees. That the Company refused.

Without the aid of my lawyer and the ADEA I would not have won my case.

RESPONDENT # 8124427:

COMMENTS:

1. Seems reluctant to take positive stands to back up their findings.
2. Seem to fear Corporate Structure.
2. Do no investigating or follow-up or findings and fail to make known any rights or avenues open to parties discriminated against.

RESPONDENT # 8152533:

COMMENTS:

I am attaching a copy of my letter under date of February 18, 1985, to Mr. R.B. Ogilvie, trustee of SMSTP & PRR Co. at that time.

I exercised my seniority and finished my service on a Chief Clerk Position with a District Office. I also took a cut in salary and retirement benefits. I retried on Feb. 1, 1982, not because of my predicament as I had previously made up my mind to retire early. However, the timing couldn't have been any better.

I would be less than honest if I did not admit the treatment I received did not have an emotional impact. To end my career with over 40 years of service, dedicated as I always gave the extra mile, is degrading.

I have no faith in the effectiveness of either the U.S. Equal Employment Opportunity Commission or the Wisconsin Equal

RESPONDENT # 8152533: (continued)

Rights Division. As far as my was was concerned as near as I could determine they did next to nothing.

I dropped my case because the people I had previously asked and agreed to testify in my behalf backed out at the final hour. I understand that they were fearful for the security of their jobs if they testified against the management.

I might add that the Asst. Vice President of P&M that initiated all the charges against me abruptly resigned on May 15, 1981, three months after he gave me the shaft. Although I have no way of proving the connection, somehow I have a feeling that his resignation was not by choice.

I have been employed by the Milwaukee Road for over thirty-nine (39) years in the Material Division of the Purchase and Materials, except thirty--eight (38) months of service in the U.S. Army during World War II.

I feel that during these thirty-nine (39) years I have been dedicated, loyal, have an excellent work and attendance record. Prior to this time I have not made any complaints and have had a good relationship with my fellow employees and supervisors. I have occupied various positions during my years of service - laborer, storehelper, various clerk positions, truck driver, Assistant Stockman, Stockman, Chief Clerk to District Material Manager, A.F.E. Clerk, Chief Clerk to Manager of Materials (7 years), Assistant to Manager of Materials and Assistant Manager of Materials.

RESPONDENT # 8152533: (continued)

I was appointed to Assistant Manager of Materials on October 1, 1978. On April 25, 1980, I was told to report to the Office of Mr. Poirier, Assistant Vice President Purchases and Materials. When I entered Mr. Poirier's Office I noticed he was quivering and when he spoke his voice was quivering which indicated to me that he was extremely nervous. Mr. Poirier informed me that the duties of Assistant Manager of Materials had changed over the years and that he was abolishing this position, relieving me of my responsibilities and quote, "you will be Staff Assistant or something like that and report to me, but you can still help John: John Brizzolari was the Manager of Materials at that time.

On May 1, 1980, a new position was established as Manager of Requisitioning and Invoice Bureau. This position and part of my former responsibilities and duties was assigned to a junior employee.

I was assigned to Staff Assistant effective May 1, 1980. This change of position eliminated my salary review schedule as of June 1, 1980. I discussed this matter with Mr. Poirier on July 18, 1980, questioning if the change in position title was the reason I was not considered for a salary increase on June 1, 1980. Mr. Poirier said, "that was probably the reason but you didn't get any salary reduction either." At this time I asked Mr. Poirier why he changed my title, he said, "because you were

RESPONDENT # 8152533: (continued)

not doing your job." I told Mr. Poirier this was untrue and unfair accusation. However, Mr. Poirier makes his own decisions, right or wrong, and if the other party's views are different from his they are of no value. Furthermore, his explanation to me concerning my position change was not the same as July 18, 1980, as on April 25, 1980. Moreover, Mr. Poirier did not converse with me on any subject or give me any directives after July 18, 1980, until February 11, 1981. On February 11, 1981, I was told to report in his office. At this time Mr. Poirier informed me that due to various changes in the Purchase and Material Division that the position of Staff Assistant would be abolished on the last day of February and I would have to exercise my seniority rights and that he was sorry. End of discussion.

Since May 1, 1980, events of my employment have been vindicative, unfair, wasteful and degrading such as:

No salary increase duing the Year 1980, except the general cost of living increase in April, however, no problem with my participation in the 10% reduction program.

Forced to give up my auto parking space that I have utilized for the twelve years I have worked in the General Office to a junior employee.

At no time and up to the present date has Mr. Poirier informed me of any specific charges insofar as my work is

RESPONDENT # 8152533: (continued)

concerned other than as aforementioned, that I was not doing my job.

I feel that I have been treated as some sort of a criminal, and in the past several months have gone through a lot of mental anguish.

I have been employed in the Material Division longer than anyone at Milwaukee. Furthermore, I have as much experience, knowledge, and qualifications as anyone in the Material Division and far more than any of my juniors. I have worked under nine General Storekeepers or Manager of Materials, other supervisors too numerous to mention and never reprimand for any ineptness or shirking of duties. In fact, I received compliments and ultimately worked myself from a laborer to Assistant Manager of Materials.

I had intended to retire after this year. In fact, due to the circumstances, I wrote Mr. Harrington a letter on November 21, 1980, asking him if it would be possible to be included in the plan as outlined in his letter of November 10, 1980, copy attached. However, Mr. Harrington did not answer my letter.

In view of the foregoing it make me very sad and disappointed after all my years of service to be treated in this manner.

At any rate I sincerely hope that the policies of Mr. Poirier are not those of top management.

RESPONDENT # 8206404:

COMMENTS:

When age discrimination occurs at ages 55 to 65 special consideration should be given to these cases. Perhaps special courts set-up for this purpose and have the case settled within six months regardless of the appeals in state courts and federal courts.

RESPONDENT # 8300008:

COMMENTS:

The experience was devastating to my self-esteem. It enabled me to discover, however, why I was "let go" and I found the reasons to be contrary to fact. This restored my self-esteem and I was able to re-establish my professional reputation in other employment before moving on to my present employment. It still leaves me with a lot of anger.

Placement for older (over 40 years old) workers.

RESPONDENT # 8300052:

COMMENTS:

I was discriminated against but I was unable to provide enough information to prove the action and lacked the financial backing to hire an attorney.

RESPONDENT # 8300129:

COMMENTS:

The process was effective until hearing. I made a bad choice of attorney who promised full return of back pays as my entitlement but collided with administrations attorney on first

RESPONDENT # 8300129: (continued)

date of hearing. I believe he was incompetent and I should do something about it, but am too tired! I asked for my job back when they wanted to settle my attorney patronized me and told me I wouldn't want to work there anyway. My settlement was 1/3 what he promised and then he said I was getting a good deal. Administration said there were no jobs available for me but hired 2 new people within a month. My attorney would do nothing about it. Hearing examiner said better to accept settlement "as is" than wait another 1½ years.

Respondent attached newspaper clipping about her ADEA case:

St. Paul Pioneer Press and Dispatch

'SURVIVOR' says sex discrimination cost all

DISCRIMINATION/therapist tells how to fight back.

My clinical specialty is domestic abuse. Since my hearing there has been an "explosion" of cases in child sexual abuse - they have hired a number of new people to cover these needs, but told my attorney there was no work for me. The WERD was ineffective in doing anything about this.

RESPONDENT # 8300281:

COMMENTS:

The investigating person from Equal Rights Division of Wisconsin asked for the names and ages of people at my former place employment and then never contacted any of them. I had about 7 people as my witness-one being a former owner of the company and

RESPONDENT # 8300281: (continued)

she never questioned any of them. She only got a statement from the company's attorney against me.

RESPONDENT # 8300292:

COMMENTS:

PETITION FOR REVIEW

Since my Attorney is unavailable, I wish to personally file a Petition for Review. The reasons are as follows:

1. Hearing Examiner John Grandberry promised tapes and/or transcripts by February, 1984.
2. Briefs were to be filed by both parties by April, 1984.
3. Tapes and/or briefs were not made available until early 1985.
4. In the meanwhile Examiner Grandberry resigned his position with the Equal Rights Division and the case was left without his firsthand observation and interpretation.
5. The aforementioned events alone should be sufficient grounds for review.
6. Subsequent events, such as the hiring of a General Manager 3 days after the conclusion of the hearing, make the termination due to economic conditions highly suspect.
7. The final outcome was that I was replaced by an Operations Manager, General Manager and a National Sales Manager - 3 positions instead of 1. The Respondent's claim that I was terminated strictly because of economics seems somewhat far-fetched.

RESPONDENT # 8300316:

COMMENTS:

This letter is in regards to a discrimination suit in which I am involved. Let me introduce myself, my name is Clauding Blum. I am 56 years old. My employment background consist of the following since 1962:

1962-1965 Bookkeeper for a GMC & Used Car Dealership

1965-1968 Same GMC Dealership but change in ownership - Head Bookkeeper

1968-1972 Bookkeeping and Income Taxes - Local Accounting Firm

1972-1973 Rehired by GMC & now also IHC Truck Dealership (See 1965-68) as Office Manager. Business Manager left in 1974 and I was promoted to Business Manager and was instrumental in the hiring of a young man (Age 24) as Office Manager. I was "Laid Off" on January 10, 1983.

Just a brief summary of conditions. In 1979 the Corporation where I had been employed obtained a SBA Loan for a substantial amount of money, due to economic problems which many companies were experiencing at that time, the stipulations which the Company was to abide by were many.

RESPONDENT # 8300316: (continued)

1980 was the first that I felt I was being discriminated against due to a pattern of happenings, by the Office Manager and the President of the Corporation. It was a pattern that was meant to pressure me to quit - which involved as an example: a charge that I was not doing my job, that I was not getting along with my co--workers, therefore taking away benefits I had had for years, and giving these same benefits to men managers, excluding me from business and management meetings, giving raises to men managers but not to me. Sending men managers to Management Schools etc, etc. I received much harassment and abusive language from the Office Manager; I lost vacation pay and a retirement benefit had I been employed continually till age 60. I was going to resign due to the pressure and tension - but after discussing the situation with the Vice President of the Company, his advise to me was to stay on and to also contact the Department of Industry, Labor & Human Relations. At the first hearing the Vice President then claimed that he was only a silent partner of the Corporation so what he had advised me was never mentioned.

I do not wish to go into too much detail, but the result of this all was - I was "laid off" on January 10, 1983 because the officers of the Bank which was holding the SBA Loan decided that my job could be taken care of by the President of the Corporation and the Office Manager. My job was eliminated there

RESPONDENT # 8300316: (continued)

by saving money so the Corporation could get back on a cash flow basis and pay their outstanding debts.

At no time was I as Business Manager ever consulted as to the financial position of the Corp. only the Office Manager and the President of the Corporation were consulted.

I did file a discrimination suit against the Corp. It came back as 2 parts.

Part 1. I was not discriminated against because of my age or sex because it was decided the letter from the bank holding the SBA was sufficient evidence to warrant my dismissal. Nothing else was taken into consideration. I did appeal but lost because of the same reason.

Part 2. I was discriminated against because of my age and sex due to all men Managers receiving wage increases and other benefits, and I had not. I filed my claim as to what I thought was fair compensation, with the conciliation office.

The Corporation denied any compensation was due me. Anything wrong with what I have stated in my letter? I'm sure you've heard it all before. I'm sure I'm knocking my head against a stone wall, as I do not have the funds to proceed with this case, yet the Corp. can go on paying the Legal fees and it doesn't cost the individuals of the Corp. a cent. So you see I am very discouraged with a law that says women have equal rights, its just not so. Many of us have dedicated ourselves to years of doing a good job only to have seniority, faithfulness,

RESPONDENT # 8300316: (continued)

dedication, etc. worth nothing, because of a built up case, in my instance of not doing my job. But I can hold my head high because I know I did my job well, but how a Corp. can get away with the obvious is unbelievable. I got a raw deal and supposedly there's nothing I can do about it as the law is still protecting this type of thing.

Thanks for letting me get some of this feeling of sourness off my chest.

RESPONDENT # 830057:

COMMENTS:

This was an all-around bad employer (now bankrupt). The chain of command was farcical and dictated by whim of the owner. (any mid-management decision was subject to reversal). Consequently, there were a lot of small empires within the larger - no company loyalty - simply pya. Thievery of time & material was acceptable & expected, to compensate for low wages and no job security. Management training was non-existent - standard operating procedure was to start everyone (no matter what their background) in menial positions and promote them in direct ratio to their ability to display fawning obeisance, however insincere and detrimental to business.

I was hired by the owner's daughter and a man in charge of the Customer Services Dept., in hopes that I could turn a bad situation around. (I had training, experience, education). They wanted to hire me as Head Reservationist, but were

RESPONDENT # 8300057: (continued)

overruled by the owner, who put one of his trusted patsies in charge. She, in turn, had a supervisor who is the one that fired me. As he did, I asked him, " why?" and he remarked, "it probably has something to do with your age." When I filed the charge, he was not the person who responded, and as the burden of proof lay on me to prove the indeed did say this (no witnesses), I dropped the action with the understanding that it would at least be on record. Since that time I know of one other person who filed the same charge (different supervisor), but I do not know the current status of that.

As I said in the beginning of this response, this was a bad employer. He was forced to bring in a management sensitivity consultant about 3½ years ago to "teach Management that the people who clean the toilets are actually human," as a now ex-employee put it then.

For me it was an ignominious experience and I spent time chastising myself for taking the job in the first place, because I was aware of the company's track record in employee relations.

As for the State of Wisconsin's handling of the matter, I got the impression that they have many many complaints but are frustrated in their attempts to convict because it's a case of one's word against another's. Maybe we should all be wired with tape recorders.

RESPONDENT # 8300361:

COMMENTS:

My job was discontinued. That's the reason I filed the suit. After the suit was filed, I was given a job that was a promotion. However, the job was so big that it now has two people doing it. My supervisor was constantly giving me secretarial work and also made me a "go-for." Also, when I started this job, the girl that was doing it was no longer available to train me. My supervisior did not know the job. Also, she would give me tests to see what I knew. I made some mistakes and she put me on probation. I was told that I should retire or seek medical help. When I did not retire, they took me off this job, which I was now doing very well, and gave me a job at a lower level, running a computer terminal and filing. The filing is very difficult because I have arthritis and have had surgery on both knees.

RESPONDENT # 8300387:

COMMENTS:

I was called "a good old Joe" many times. Told I no longer fit the new image of the store and that it was "time for me to move on, go some place else, do something else." All this after I had been put on probation for 2 weeks, trying to force me to quit. There were 2 people form the store at the meeting and it became my word against theirs and I couldn't get around their lies. All the filed charges did was drag the whole mess out and my life hasn't been the same since.

RESPONDENT # 8300393:

COMMENTS:

We were treated very respectfully and sympathetically. There was no question as to our case. We were laid off and new younger women put into our jobs. We were Civil Service, they were not. We had 10-17 years experience, making $8.35 an hour, plus benefits. The new employee was paid $5.75 per hour and no benefits, thus the city "save money" (of course, in the end, they paid our Unemployment Comp., plus damages to us when we settled our case).

RESPONDENT # 8300398:

COMMENTS:

I think there must be guidelines so employers can't fire people at will for no legitimate reason. We (7 of us) were fired because we had been with the company for a long time and our wages had reached a point (promised at our hiring), where they felt, and did, hire new, young employees at a much lower wage and without benefits. The promises given to us at our hiring were completely ignored and explained by saying the times were different. We had new top management and it had been a mistake to hire us under Civil Service, which had now been discontinued. We were supposed to remain under the "grandfather clause."

RESPONDENT # 8300437:

COMMENTS:

I was laid off from work when I filed this report. The people I was working for wouldn't let me advance. The company hired me to drive truck and for 1½ years that is what I was doing. Then the company decided that they had to lay some people off. They told me that I would either take the guard position, so I took it. After I took the position they hired new people to drive and refused to put me back to driving. So after 1½ years of night guard duties involving cleaning, painting, washing trucks, steam cleaning, haulling boxes, etc. one night the head super came around drunk and told me it was my last night that I was fired. I did my work as good and better than anybody. I also ground feed for them. All of those things was part of the night watchmans job including unloading trucks. The next day I reported for work only to find out they had put a young 19 year old person in my place. There was no reason to lay me off. After a few weeks I then filed the complaint with the State of Wisconsin. The company sent them a letter stating that I did things they didn't like. I told the State I had some witnesses but they refused to do anything about it, so they closed the case. I haven't been able to find a job since. I have lost my family, friends and all because of it. I had a broken leg for a year and at the age of 59 I have trouble finding work.

RESPONDENT # 8300460:

COMMENTS:

Without a union or a contract you do not have any protection, and as a result after 20 years with the company and being senior employee I was discharged from my job.

RESPONDENT # 8300533:

COMMENTS:

My supervisor had been with the company only four months when in January 1983, she told me she was terminating me at the end of March. The first of March I started training a younger person who was incapable of handling my job. I had to retrain her each day and at the end of March my supervisor ask me to stay on through April to continue to train the new person for my position, but I refused.

My supervisor and manager of Region called me in to sign a statement that I was resigning due to my health, which I refused to sign.

At this time I am unable to find the complaint I filed or the letter my supervisor wrote about my work production.

I was without work for 21 months, so I was financially handicapped as I am my sole support. So I am still giving some thought to start a public lawsuit against my former employer.

When I was told I was being terminated I went to the office manager, but she could do nothing for me as they had relieved her of her authority.

RESPONDENT # 8300533: (continued)

When I put in applications for other companies she gave me a recommendation, as well as a former supervisor and accounting manager from another region of the company.

So due to the good recommendations I was given by those people, I believe the manager and supervisor has never told anyone they had terminated me.

I also believe my close co-workers in the region I was working was never told I was terminated. There have been statements made to friends by my close co-workers, such as I was sleeping on the job, I never helped anyone else with their work load and I had no formal education, which were all false.

When I meet any of my former supervisors or accounting managers in public places they always approach me and talk to me on very friendly terms. Some have ask me why I left my position after 10 years and I tell them I was terminated, which they are very surprised and shocked. So I feel it was my supervisor and my region manager who wanted me out of the company due to my age. As the region manager was always asking my age, which he could have found in my personnel file.

If I can be of any further help to you and the middle aged people please contact me again.

I worked with the Over 55 Agency, but feel they didn't help me to get a good position with a living wage. I did work with the mature workers in the Over 55 Agency and felt they was very helpful with my resume and mock interviews. I was very down at

RESPONDENT # 830533: (continued)

the time as I had already used 200 resumes. They gave me the will to fight and get a job.

At the present time I work for a small company where I am the oldest person. I can get along with all the younger people there and find some basis to meet and converse with them.

When I went into my present position the accounting books was a very big mess, so I worked for 3 months, plus the every day work, to get things straightened out. After 3 months they increased my wages 55ø an hour which is still $1.56 less than what I was making when I was terminated.

The last 2 years I was at my former company I was given a 5% raise and the last year I was given a 2% raise. This I found out was done with all the older women in the company and some of the men. I felt the company was prone to younger people with book learning and not experience. They was not happy with my 2 years plus in accounting, but the young men with 2 year degrees were treated very good.

I hope to hear from you if I can be of any further help.

RESPONDENT # 8300572:

COMMENTS:

I was an office clerk with many duties and enjoy office work. When I was terminated I was told that I would never be able to get an office job and/or any other job in this area. As a result I did not put my past employer on my application with

RESPONDENT # 8300572: (continued)

the company I now work for. I am not holding an office position but now work in the factory.

One of my former co-workers, during his yearly review, was told that they wanted to fire him but had checked with their lawyer and was told they had no reason and just to be careful and watch for the least little error he may make and they they may be able to fire him. I feel since I filed suit that my former co-workers will be treated in a fair way now.

I did not file a suit until a lot of time had passed because I wanted to make sure I was doing the right thing. I think more time should be given to persons filing. Right now I can think of many things that should have been in my report but had forgotten them at the time of filing. I was advised to ask my former co-workers for support and for them to make statements but could not do this knowing it would cause them trouble and/or dismissal. My former employer also discriminated against Hispanics. Whenever one filled out an application it was thrown away with a smile. They hire only whites or did while I was there. This could have been mentioned in my suit.

RESPONDENT # 8300652:

COMMENTS:

Even though the company was wrong. But the paragraph is overshadowing the paragraph. Though it is very frustrating I did what I had to do. It gave me at least the satisfaction. I wrote the President of the USA and Congressman, Bob Kastenmeyer.

RESPONDENT # 8300652: (continued)

Bob Kastenmeyer replied very sympathetically, but the President referred me to the National Employment Agent (federal). What I got from them I know already.

You may have a copy if you wish.

RESPONDENT # 8300653:

COMMENTS:

If the company is found to discriminate they should print it in the paper (front page). They wanted everything (hush hush) and they got it.

RESPONDENT # 8300893:

COMMENTS:

There was every reason to know I was replaced by a young girl with no experience except what I had taught her. She was hired by Commission President with less qualifications than probably 25 others. She has since left the job. Also the Commission President and wife moved from Wisconsin to Colorado. Does that explain the reason for my release after 9 years? Other Commission members couldn't understand it but couldn't fight City Hall.

RESPONDENT # 8300917:

COMMENTS:

All I received was one hell of a run around for 2 years. After which it boiled down to my word against the city government, which is like beating my head against a brick wall. I was offered a $1,000 to drop suit, which I refused through

RESPONDENT # 8300917: (continued)

advice from my attorney which was dumb, because at least I would have come away with something other than my integrity.

RESPONDENT # 8300932:

COMMENTS:

This process simply accepts the company position without question.

The experience of being laid off at 52 years of age for the first time in my life was very devastating. I feel that companies that practice this kind of discrimination should be liable for their actions. I would hope that in the future businesses could be encouraged to act in a more responsible way towards their long term employees.

RESPONDENT # 8300998:

COMMENTS:

Certain long term ideas concerning sex (male & female) and older women must be erradicated (somehow) from all the business work world. Older women do not "fall" for foolish behavior, nor are they prone to "gushy" conversations with male supervisors. This is why I really lost my job and filed a complaint. I was there to do a job and follow rules and regulations. Supervisors of the male gender are not.

RESPONDENT # 8301004:

COMMENTS:

They (WERD) seem to favor the large company and don't give

RESPONDENT # 8301004: (continued)

the individual an explanation that is satisfactory. So you just give up.

RESPONDENT # 8301024:

COMMENTS:

1. Your questionnaire does not apply to my case.

2. I applied for the job 3 times, had three interviews, on the third one was told I'd be working in two weeks. Also told what I'll have to wear what equipment I'd be using to all effects I was hired, but never called. On the third interview I had taken a resume of all the work I had done in different vocations. I kept calling to see when I would start work and kept getting put off. The company finally sent me a letter saying they were not going to hire me, with no explanation. I filed against them. The result was a letter from the same company stating I was not competent enough. After an asinine statement like that - I dropped the suit. I do not want to work for a company that hires personnel that judges you. I am now working for a company for the past two years with no problems. I have a very good work record.

RESPONDENT # 8301040:

COMMENTS:

The whole process is much too slow. As yet I have not had a hearing even though WERD found probable cause. I understand after the hearing it could take an additional 2 to 3 years to

RESPONDENT # 8301040: (continued)

get the decision. The process should be complete withing 12-18 months at most.

RESPONDENT # 8301044:

COMMENTS:

I appreciated having someone when I needed them.

RESPONDENT # 8301050:

COMMENTS:

I don't think I would have gone through without it.

RESPONDENT # 8301110:

COMMENTS:

In my case the mill that I worked for closed the division that I was employed at. Other people were transferred to other division. Our case is not settled yet.

RESPONDENT # 8301142:

COMMENTS:

I have experienced age and sex discrimination for at least 12-14 years. Employers know who they want for the office positions I apply for before I even talk to them. I live in Rock County, So. Wisconsin, where women, young and inexperienced have a 95% chance of landing clerical positions over a mature (over 55 years old) with short term employment positions, because of hard luck (company's closing up). I'm a qualified Bookkeeper, Accountant, Auditor with a 2 year Associate Degree, trying to compete for employment in my field, against young and unexperienced females. Employers & Employment Agencies

RESPONDENT # 8301142: (continued)

discriminate. It's very evident, every day, in this community.

RESPONDENT # 8301234:

COMMENTS: None.

RESPONDENT # 8301429:

COMMENTS:

SEQUENCE OF EVENTS

Was employed by Consolidated Papers Inc. for 25 years, of which the last 16 were in first line supervision.

Within those 25 years I was disciplined once and given one week off without pay for hanging up on my next in line superintendent above me (the phone that is).

Other than this, I was repeatedly told by personnel that I was in the top ten percent of wage increases each year because of my performance.

My department, unlike many of the the others, functioned very well. I managed most of its responsibilities such as inventory control, purchasing, safety, personnel work, grievances with the union through the first three steps, etc.

My superintendent, to whom I reported, had no responsible duties, but his job description included most of the duties performed by me. It was known throughout the company that he had no responsibilities and it was a standing joke that they kept moving his desk physically from one department to another, but his job of walking around and talking sports all day never changed.

RESPONDENT # 8301429: (continued)

I never resented this as long as he never affected the performance of my department --- everything he was given to do by his manager, he screwed up, but it was always overlooked and covered up. He and the Industrial Engineering Department studied my department and they changed the manning procedures which drove the cost up over $1.00 at ton and had a line of trucks two blocks long waiting to get into the dock to get loaded. It eventually resulted in a lot of overtime and violations of working people longer hours than the law would permit just to get caught up.

I had a five week vacation scheduled in May for taking in March. While I was on vacation, I was terminated. Upon my return, I was called in on a Saturday and given a letter saying that I had been terminated for insubordination.

I went to the personnel department on Monday and found that the action had been started against me on the Thursday prior to my going on vacation, however nothing had been mentioned to me by my immediate supervisor. My manager nor the Mill manager found it serious enough to call me in and discuss anything, yet I was terminated. Letters were in my file addressed to me that I never received copies of. Upon requesting them for the personnel manager, I was told that it would cost me 75 cents per copy.

I filed the discrimination with the Equal Rights Division on the basis that my performance was exceptionally good, my attendance record was perfect, yet I was terminated. The

RESPONDENT # 8301429: (continued)

company knew that I had plans of taking some of the 23 banked weeks vacation each year along with the six that I earned each year and also that I planned early retirement at 60 if possible. This fact, along with my assumption that my wife's accident resulting in her becoming paralyzed from the waist down with large doctor bills to the Self Funded ERISA Co. Health Plan accounted for the dismissal.

The investigatory stage handled by Mr. Borman in Eau Claire was handled very well. (Many of the documents submitted by Consolidated were never in my file when I checked it the Monday after my dismissal) Most of this, or I should say, all of this was from one person, my immediate supervisor. There was nothing else to show insubordination of any sort.

The Equal Rights Division did rule against me however, and I requested a hearing with witnesses I could bring in which refute the termination letter. By this time the Federal Branch of the Equal Rights had gotten into the act and the hearing was scheduled at Appleton instead of Wisconsin Rapids. I believe this was intentional so I wouldn't get too many witnesses to travel to Appleton. I requested that this be rescheduled at Wisconsin Rapids instead and then the question came up that my request for a hearing was not timely.

I sent the request for the hearing out prior to the deadline. The mail leaves Wisconsin Rapids once each day and it

RESPONDENT # 8301429: (continued)

would be delivered to the Central Post Office in Madison the next day which would be on time. After corresponding on this once or twice, I found out that the office in Madison only pick up their mail twice a day, once at 6:30 AM and once at 8 AM. I hardly felt I should be charged with late filing if the Equal Rights at Madison do not feel that it is necessary to pick up and date stamp their mail after 8 AM in the morning. If the entire country can go by the date stamp on the envelope, why isn't the Equal Rights Division forced to go by the same date: Then if they don't pick up their mail, it would make no difference.

I feel that this hearing could have really pulled upper management out to address the problem and change their methods of doing things. Another supervisor plus a receptionist received the same treatment from Consolidated shortly after I did. It was handled in the very same manner and I knew the person in Traffic very well. His work record was exceptional and he saved Consolidated over a million dollars each year in negotiating with their carriers and railroads, however, he too had a supervisor with a poor track record. Consolidated terminated 94 people in 1974 over 50 years old, so they have a track record of sort.

I felt when this happened to me, that my case was quite unique, and that I would pursue some sort of action for loss of wages, vacation benefits, health benefits, and retirement benefits that was lost or reduced by this action.

RESPONDENT # 8301429: (continued)

After watching the trends since Mr. Reagan took office, along with Kristine Kraft's fight in Kansas City, even after the jury decided in her favor twice, I have decided under the present system, this would be quite futile.

Until such time that we have a national policy and not individual states policy, that make it illegal to fire without sufficient reason, this will not change. Had I had union backing, I would still be on the job and I believe management should have the same right.

Please do not hesitate to call me. There is much my lawyer witnessed, but I can't put everything down - it would get too long. Thank you for your interest.

RESPONDENT # 8301681:

COMMENTS:

I lost all my sick leave days, vacation pay I feel I had coming to me.

The main thin in my life my health which is ruined. My nerves are so bad that even if I could have a job offered to me I couldn't take it. I pass without warning, have no medical insurance, bills I can't pay. Was forced to take Social Security with a big cut.

The harassment I had to take before they fired me no human should have to go through.

To take my interest in life and my health must make people like this feel pretty big.

RESPONDENT # 8301681: (continued)

I do appreciate what WERD did for me. It just didn't help me keep my job.

RESPONDENT # 8301688:

COMMENTS:

EEOC accepted managements written statement without onsite investigation.

RESPONDENT # 8302146:

COMMENTS:

The State did very good work for me. I am very well satisfied

RESPONDENT # 8302147:

COMMENTS:

I was fired from my job mainly because my superintendent didn't like me - he wa a male chauvinist - I'm no longer skinny, beautiful, young and "don't feel the need to hang out at the bars" to hold down a job, so obviously I was no longer with the crowd. I also had some wage assignments against me and I feel that's why I got fired. But they find other reasons. This all happened at Hillshire Farm, New London, Wisconsin.

I'd like some information in return.

RESPONDENT # 8350523:

COMMENTS:

These agencies operate as only a job. They make no extended efforts to see if a company is lying - in my case.

RESPONDENT # 8350523: (continued)

I was a Production Foreman of Allis Chalmers. Another area was closed down. I was replaced by an employee from that area who was much younger than me, and had never been a Foreman or Supervisor before. The person or persons who handled my complaint never put forth any effort at all. They sent a letter to A.C. A.C. sent one back denying the charge, because the employee who replaced me was over 44 years of age and was in the protected age group. I was notified by the Agency - that was their finding.

RESPONDENT # 8350545:

COMMENTS:

In writing this letter to you I hope it will point out some of the weaknesses in our laws and that it shows you that the working man is subject to the whims of an employer that can turn his life upside down.

I was laid off in September 1982. Approximately 13 months prior in August 1981, I fell and had a serious accident on the job. I broke my arm, hand and suffered severe rib injuries; it kept me out of work 10 weeks, after which I was not re-employed. I was told there was no work for me. I had at this time worked for this employer, R.A. Bachman Co. of Milwaukee, Wisconsin, for approximately 11 years without losing hardly any time. I was Foreman for all 11 years, except 12 months. I was rehired after an additional 7 weeks being unemployed. This only was done by

RESPONDENT # 8350545: (continued)

the urging of my local union, Plumbers #75. I worked approximately 1 month and was laid off again. This time I was off from January 1982 until May of 1982. I worked until September of that year, was laid off again and never rehired. I was not given a reason, only that work was slow, but in a few weeks I expected to be called back as there was some work available. I never heard from the company again. In February of 1983 I called Mr. R.A. Bachman on the telephone and he told me he had no work for me and when I asked him if he ever wanted me back he said "no." I said "why not?" He said I was too old and over the hill. The office secretary overheard this conversation as he took her telephone at her desk. At the urging of my Business Manager at Local #75, I filed suit against the company, on discrimination of age. I'd like to point out to you that the secretary testified at the hearing as to what she heard Mr. Bachman say to me. She also answered the phone and knew it was me. Mr. Bachman also admitted, under cross examination, that he laid me off because I was too old. Now doesn't the law protect those between ages 40 - 70 years? If so, how could I ever lose a case such as this? He broke the law and was guilty out of his own mouth on the witness stand. The result was that I lost the case. No evidence of discrimination was found. "It stinks!" What good are laws like this; the employers do as they please and get away with it.

RESPONDENT # 8350545: (continued)

As a result I was out of work 11 months. My unemployment ran out and I was fortunate to find a job - at less than half my original wages, and this being some 300 miles from home. I'm very bitter about this and I hope that God forgives me for what I've thought about that man and this situation. I was fortunate to be hired out, in August of 1983 to a new employer and have been working, but not steady and not as a Foreman.

I'd like to point out that I'll be 53 years old this October and in December of this year I will be at my trade of plumbing 35 years. I am considered a top foreman and worker by my friends and associates in the plumbing business. I am a darn good man. I worked hard all my life and for the R.A. Bachman Co. But my situation at being at the top of my business and trade - is I'm too old. "It stinks."

The changes I'd certainly make would be to strengthen the law; make it have some teeth. When an employer admits to breaking the law it should mean something. I also would reorganize the method in trying a case. There is only one person making a decision; the Commissioner at the hearing. That should be changed to a jury. The person and the head of my trial had only three years experience at her job. I am appealing the case, but don't have a lot of faith in the outcome.

RESPONDENT # 8350599:

COMMENTS:

The law is only for the individual, not big business. They can retain younger people and discharge older employees and get away with defying the law. The individual can't "prove it," so the law is against the individual and in favor of big business.

RESPONDENT # 8350606:

COMMENTS:

IV. Yes, I would never apply for a checker's job in any grocery store. Because of the age discrimination I was involved in they did treat me a little nicer, but about a year after that they closed the store and we were asked if we wanted a transfer, but the stores were very far from our homes. So the bottom line is our salary was too high, and that was their way of getting rid of us. I now have a job as a switchboard receptionist and I just love it.

RESPONDENT # 8350654:

COMMENTS:

The average employee does not know what rights they have nor how to attain them.

The legal process tends more to enrich the attorney than to provide justice to the employee, although both do happen.

The mental anguish is real - but it can be resolved if one has a legitimate complaint - because one then has the backing of co--workers.

RESPONDENT # 8350654: (continued)

I read where lawyers do not attack each other - only the material in between.

My lawyer was not notified of the date my trial was to be held in court. I was wondering why he never got in contact with me - so I finally called him. He was surprised and said he could not make a good case in 2 weeks, so he called WERD to set a new date. Then my lawyer and my boss and group were negotiating out of court, but was not fruitful, as one day a lady arrived with 5 supoenas and asked for my employer by name. He happened to using the copy machine near my desk, so I said, "This is he - and I could see it made an impact on him as he took them from her. He went to his room with his - after he told her where the other people's rooms were - closed the door and got on the phone. There were many calls and meetings (which I did not attend) before the settlement was reached in about 2 days.

I did not know then a form had to be posted in the building and in the local paper.

At first I felt dejected and wondered why is "this happening to me." Then I told one friend - then another. (the people wanted him to accept the position this supervisor had a couple years before he took office, but he declined) he said, "Ann, do something about it. No body seems to retire in peace around here." That did it. Soon everyone knew and all gave their

RESPONDENT # 8350654: (continued)

support. The next day I got in contact with WERD. I'm happy I did.

RESPONDENT # 8350749:

COMMENTS:

I was a part-time hostess at a fine hotel restaurant. I enjoy working with people and very shortly after I began working there, my supervisor was complimenting me on my work. I was looking for full-time employment and had hoped to keep this job to help clear up debts. The chief chef's wife decided she wanted to work and would come in and "help"me. I spoke to my supervisor, but she paid little attention to him and and according to them he was told to hire her part-time. Eventually he was told to tell me business was slow and I would have to be laid off. Then another very young girl was hired.

I settled for a lesser amount than due me (wages till I found another job) because I desperately needed the money. I was new in the state and could not collect unemployment.

RESPONDENT # 8350771:

COMMENTS:

I complained to the Federal Gov't as a matter of course. State of Wisconsin authorities were notified and copies of Federal Complaint were sent to them then the Federal Authorities. The State of Wisconsin did nothing. But the Federals did all the negotiating. Final results were

RESPONDENT # 8350771: (continued)

transmitted to the Wisconsin Authorities. After all benefits were reinstated, the complaints were dropped.

RESPONDENT # 8350786:

COMMENTS:

Except for one personal interview with the local Federal office, there never was any attempt made to contact me as to determinations. As it was, I called my assigned case worker every month to learn progress and was continually delayed. It finally took 13 months to reach an initial determination. The state responded in approximately 15 months. I was never interviewed by any state case worker. I still believe that grave injustices were put upon me as well as other female supervisors.

I did not contest the decision because legal fees would have been too excessive. (approx. $12,000).

I was stripped of my position 2 weeks before I returned from a 30 day sick leave and was never informed until the day they dismissed me. I was replaced by a 22 year old male at a lesser salary, who was allowed overtime pay, where I was not.

RESPONDENT # 8351090:

COMMENTS:

More attuned to race discrimination.

1. My first interviewer appeared to be on some type of medication, dropping off to sleep.

2. The investigation was continued only on my repeated insistence, through documentation certified letters.

RESPONDENT # 8351090: (continued)

3. I was "cross-examined" as a criminal.

4. Investigators were changed four times, all were difficult to understand or communicate feelings with.

5. The most traumatic experience of my life was viewed lightly.

RESPONDENT # 8351091:

COMMENTS:

The original complaint was filed with the Equal Opportunities Office U.S. By filing this complaint I feel several other workers in the same age group and laid off status gained some compensation which we would not have received for many years to come. The complaint was settled out of court.

RESPONDENT # 8351193:

COMMENTS:

Interviewer was tired and yawned during interview, did not seem to understand main point of my complaint.

RESPONDENT # 8351220:

COMMENTS:

The WERD gentleman who investigated my case was patient with me, but still the situation was not clear: How much it would cost? What I was responsible to do, and ultimately I was told as an inexperienced person I would never stand a chance in a hearing - only a lawyer would help. So I hired one who said it really was not easy to prove age discrimination. "I really didn't have a prayer, they'd try." So I had to make a deposition with the Mortgage Comp. lawyer and then they offered a very

RESPONDENT # 8351220: (continued)

small settlement and agreed to remove any remarks on my incompetency from my files. Who knows whether it was done. I did get a check (can't reveal its amount according to agreement), of which layer took 40% for about 10 hours work. WERD man did most of work (and he only gets his salary), prior to their taking the case. This was an eye opener. Big companies and lawyers still have the real winning. I was only a mosquito with a tiny sting. Company became shrewder about getting rid of older women.

RESPONDENT # 8351283:

COMMENTS:

Equal Rights Investigators were young and disinterested, affected by ??????? as it might affect their own jobs; too much identification with Employer.

RESPONDENT # 8351510:

COMMENTS:

As a foreigner I had lots of jobs in USA. School bus driving was my best favor. I did not make lots of money, but I liked it the best. I loved it, because it gave me a great opportunity to educate myself. I had all the time in the world to read and learn my lessons because I was going to school all the time and drive a bus after noons and at night.

Second, I gave nice a time to get out of the house. The best was when I had charter bus - for sport activities like baseball, football, swimming and track and field. Most loving

RESPONDENT # 8351510: (continued)

one was when I had a charter bust on Sunday, and spend a day in a ???????? country ??????????. That was a day of happiness. I was happy when???????win. Now I miss all of it, besides I feel very sad. That is why I decided to go back to Yugoslavia. I do not like Americans ???? more because they took all jobs away from me including AMC.

RESPONDENT # 8351613:

I feel that the case filed with the State of Wisconsin was not handled properly - never called in personally, just letters only. Didn't know that it had been turned down until I received a letter. I did talk to the person that was handling the case and she had stated earlier that she felt that I did have a case and then months later a letter came and said that I had lost it.

My lawyer is going thru the Federal Court now.

RESPONDENT # 8351702:

COMMENTS:

I feel that the WERD did not thoroughly investigate my allegations. In the letter which I received from them there were items which were not discussed with me, but was received from the EEOC.

The law against age discrimination was not clearly defined to me prior to filing my complaint. Only after a year, when I received a letter stating that my complaint was not allowed. The law states that to be discriminated against, the person that

RESPONDENT # 8351702: (continued)

you were replaced by had to be 40 years of age or less. This to me is discriminatory in itself.

RESPONDENT # 8351777:

COMMENTS:

1. In a state that has companies leaving because of taxes, write offs, etc., there is a definite lack of cooperation and enthusiasm to pursue many issues against one of the divisions of a world known company.

2. Young aggressive middle management will use any tactics to make themselves look great. Especially when there are personal and social connections involved.

3. Middle management will lie, cheat and use any means possible and upper management will support with no questions.

4. Other management who I interfaced with supported me, but would not get involved.

(1) Middle management got involved in support of me and he was verbally reprimanded and suffered responsibilities and financially depress for two years.

RESPONDENT # 8351921:

COMMENTS:

Pleasant, apparently sincere, but limited.

Without prior announcement or warning go the company and check the records of the particular person, i.e. evaluations, job performance and also the "replacement" person her/his age and date of employment or transfer.

RESPONDENT # 8351921: (continued)

Letters sent to the company only allow information supplied by the company to be written and time for the company to "adjust" facts.

RESPONDENT # 8351960:

COMMENTS:

The office in Milwaukee that handled my case did an excellent job. The gal in charge couldn't have been more co-operative and courteous. Each time I called she explained just what was happening and never, as some do in these offices, cut me short.

The changes that should be made are that the companies should have to admit to their guilt. Why would they settle at all if they were not at fault? True, we could have taken the case to court to prove their guilt and probably have gotten more of a settlement, but what ordinary working person has that kind of money?

RESPONDENT # 8352052:

COMMENTS:

It disturbs me that my name was released to you however worth-while the purpose served which it appears your is.

In order to reduce costs I was terminated, as my employer acknowledged, without cause and subject to a non-complete provision of my employment contract against which I brought suit. As a companion action I also filed an age discrimination complaint.

RESPONDENT # 8352052: (continued)

I believe that this latter action was instrumental in negotiating my "freedom" in return for which I withdrew my ADEA complaint.

RESPONDENT # 9991177:

COMMENTS:

I would be careful before signing any "contract" such as one I had signed to be sure it was not a one-sided contract with no provisions for recourse or amendment.

Age discrimination by statements such as that "old man" or "limpy," in front of the entire office, especially after being knocked down by an armed hold-up man who threatened my life with a gun at my head in mid-day during my route and service plan in my sales debit area, servicing my clients. This experience caused me mental suffering, costly psychiatric clinic visits, lost sleep, lost income and fringe benefits, plus non-acceptance of Workmen's Compensation claim for the medical bills, pressure and intimidation of the office manager.

My case took over 7 months to resolve and involved WERD, ADEA, Workmen's Compensation Department, Unemployment Office and numerous trips to the various agencies, and finally my attorney, who sat in with defendant manager, and the company attorney in the Workmen's Compensation hearing. Final settlement was made against the company and manager, over 13 months after my traumatic experience.

March 24, 1987

VITA

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EDUCATION

Ph.D.	1979	Syracuse University (Fields: Organization and Management, Social Psychology, Law, Statistics) Dissertation: Labor-Management Productivity Programs: Their Operation and Effect on Employment and Productivity
J.D.	1977	Syracuse University College of Law
M.S.	1974	University of Massachusetts (Labor Studies)
B.A.	1972	University of Rhode Island (Political Science)

SCHOLASTIC HONORS:

Beta Gamma Sigma Honorary Society

Senior Fulbright Scholar	Research Fellow, Department of Industrial Relations, London School of Economics and Political Science, 1982-1983. I conducted a study "Union-Management Cooperation in Great Britain: An Anglo-American Comparison of Operational Characteristics and an Assessment of Effectiveness." This project was sponsored by the United States-United Kingdom Educational Commission. It compared union-management cooperation and quality of work life programs in Great Britain with similar efforts in the United States. Data on the U.S. experience was collected during the period 1978-1982 in projects conducted under the sponsorship of the U.S. Department of Labor, National Science Foundation, and the W. E. Upjohn Institute for Employment Research. I also participated in all department activities including teaching a course on Personnel Management and Industrial Relations in Britain.
Fulbright Travel Grant	Visiting Lecturer, University of Tel Aviv, February 24 -March 6, 1983. I conducted a seminar on cooperation and change in the U.S. and Great Britain. I met with individual faculty to discuss research interests and projects.

PRESENT EMPLOYMENT:

Associate Professor of Management

School of Management, Syracuse University, Syracuse, N.Y. Over the last several years I have taught graduate and undergraduate courses in human resource strategy & policy, organization behavior, research methods, quality of work life, compensation, collective bargaining, and labor and employment law.

Director Employment Studies Institute

I am responsible for the administration of an endowed, interdisciplinary center for the study of human resource and employment problems.

The Institute assembles faculty from many disciplines including personnel and industrial relations, organization behavior, economics, law, sociology, psychology, education, public administration, and engineering. The Institute houses the School of Management's undergraduate, graduate, and doctoral programs in personnel and industrial relations. The mission is to broaden and enhance teaching and research on all areas of employment policy. The Institute has a panel of external fellows comprised of academics and practitioners of national reputation.

My responsibilities include all facets of planning, budget, programming, as well as academic content.

Additional Institute support is provided by conferences, seminars, and research grants.

Panel Member

Chancellor's Panel on the Future of Syracuse University.

Appointed by Chancellor to serve on select panel of fourteen faculty members to plan for the future direction of the University through to the year 2000. The panel has received a two-year mandate to review and recommend policy changes on the entire range of academic activities at Syracuse University. I serve as chairperson of the Committee on Resources, Infrastructure, and Leadership.

PREVIOUS ADMINISTRATIVE EXPERIENCE:

Acting Department Chair

Department of Organization and Management, Syracuse University. The duties of department chairperson include general supervision of department work; execution of University, School, and department policies; recommendations for appointments, reappointments, tenure, leaves, dismissals, secretarial assistance, and research facilities; recruiting, orientation and development of new faculty personnel; determining assignments and teaching loads of full-time and adjunct faculty; submission of budgetary requests on behalf of the department; administration of department travel and endowment funds; and service as a member of School's Management Committee.

PROFESSIONAL ACTIVITY:

Editorial Experience: Consulting editor, Journal of Applied Behavioral Science.

Reviewer, Industrial and Labor Relations Review, Industrial Relations, Journal of Labor Research, and British Journal of Industrial Relations.

Consulting Experience: Consultant on personnel and human resource planning, compensation systems, productivity-gainsharing, and quality of work life programs. Clients include Fortune 500 firms such as United Technologies, Celanese, Westinghouse, General Electric, Ingersoll-Rand, Pepsico, Siemens, The New York Times, British Steel, Goulds Pumps, New York State Governor's Office of Employee Relations, Federal-Hoffman, MONY Financial Services, Kaiser Steel & Aluminum, Bristol-Myers and TRW as well as several smaller companies in the Upstate New York area.

Arbitration Panels:
American Arbitration Association Labor Arbitration Panel
American Arbitration Association Commercial Arbitration Panel
New York State Public Employment Relations Board Mediation and Fact-finding Panel
New York State Mediation Board Arbitration Panel

BOOKS:

Gainsharing: Creating Organizational Change and Competitive Compensation Strategies (in progress).

Union-Management Cooperation: Structure, Process, and Impact, Kalmazoo, Michigan: W. E. Upjohn Institute for Employment Research, 1984. Named by Choice (American Library Association) as one of the Outstanding Academic Publications of 1985-86.

The Aging Worker: Research and Recommendations. Beverly Hills, CA: Sage Publications, 1983 (with M. Doering and S. Rhodes).

PUBLICATIONS AND PAPERS:

"Gainsharing: Do It Right the First Time," Sloan Management Review, Vol. 28(2), 1987, pp. 17-26.

PUBLICATIONS AND PAPERS: (con't)

"Gainsharing: Issues for Senior Managers," (under review).

"Analysis of the Incidence of Organizational Retaliation Against Age Discrimination Complainants" (with C. Miller and J. Kaspin).

"Gainsharing: The State of the Art," Compensation and Benefits Management, Summer 1986, 285-290.

"A Comparative Analysis of Six Gainsharing Plans" Organization Dynamics (in press).

"A Longitudinal Assessment of the Operation and Impact of a Plant-wide Productivity-Sharing Plan" (under review).

"State Enforcement of Age Discrimination in Employment Legislation" (with C. Miller) (under review).

"State Enforcement of Age Discrimination in Employment Legislation: The Wisconsin Experience" (with C. Miller and R. Havranek) (under review).

"Reassessing the Impact of Time on Union Representation Elections," Journal of Labor Research, 1987 (with Gary Florkowski) (in press).

"The Impact of a Group Reward System on Employee Work Attitudes" (with R. Havranek and C. Miller) (under review).

"The Impact of Overtime Work on Industrial Accidents," Industrial Relations, 1985, 24, 234-246, (with S. Rhodes)

"A Decade's Experience with the Scanlon Plan," Journal of Occupational Behavior, 1987 (with C. Miller) (in press).

"Models of Cooperation and Change in Union Settings," Industrial Relations, Vol. 24(3), Fall 1985, pp. 382-394.

"Implementing Gainsharing into a Quality Circles Environment," Quality Circles Journal, Vol. 7(3), 1984, pp. 8-16.

"Employee Involvement: Making Supervisors Believers," Personnel, February 1984, pp. 24-28, (with C. Miller).

"An Empirical Assessment of the Age Discrimination in Employment Act," Industrial and Labor Relations Review, Vol. 38 (1), October 1984, pp. 64-74 (with C. Miller).

"Performance Appraisal and the Age Discrimination in Employment Act." Personnel Administrator, Vol. 29 (3), March 1984, pp. 48-58 (with C. Miller).

"Cooperation and Change in Union Settings: Problems and Opportunities," Human Resource Management, Vol. 23 (2), 1984, pp. 145-160.

PUBLICATIONS AND PAPERS: (continued)

"The Scanlon Plan: A Longitudinal Analysis." Journal of Applied Behavioral Science, Vol. 20 (1), 1984, pp. 23-38.

"Performance Appraisal Systems and the Age Discrimination in Employment Act." Proceedings of the Annual Meeting of the International Personnel Management Association Assessment Council, 1983 (with C. Miller).

"Forty Years of Scanlon Plan Research: A Review of the Descriptive and Empirical Literature." International Yearbook of Organizational Democracy, Vol. 1, 1983, pp. 53-71.

"The Impact of Union-Management Cooperation on Productivity and Employment." Industrial and Labor Relations Review, Vol. 36 (3), 1983, pp. 415-430. Reprinted in T. S. Bateman and G. R. Ferris, Method and Analysis in Organizational Research, Reston, Va: Reston Publishing Company, 1984, pp. 292-310.

"Evaluating the Older Worker: Experience Under Age Discrimination in Employment Act." Proceedings of the 20th Annual Meeting of the Eastern Academy of Management, 1983, pp. 148-151 (with C. Miller).

"Problems and Opportunities in Implementing Cooperative Union-Management Programs." Proceedings of the Thirty-Fifth Annual Winter Meeting of the Industrial Relations Research Association, 1982, pp. 189-197.

"Productivity Improvement Programs for Smaller Firms." Journal of Small Business, Vol. 21 (1), 1983, pp. 14-20 (with D. DeSalvia).

"Wage Incentives and the Fair Labor Standards Act." Compensation Review, Vol. 14 (2), 1982, pp. 34-46 (with G. Florkowski).

"A Conceptual Model of Retirement Adjustment." Proceedings of the 19th Annual Meeting of the Eastern Academy of Management, 1982, pp. 144-148 (with G. Florkowski, S. Rhodes, and M. Doering).

"An Assessment of Union-Management Cooperation and Its Impact on Productivity, Employment and other Indicators of Organizational Effectiveness." A final report to the National Science Foundation, September 1982.

"Evaluating the Older Worker: Use of Employer Appraisal Systems in Age Discrimination Litigation." Aging and Work, Vol. 4 (4), 1981, pp. 229-243 (with C. Miller).

"The Impact of Management Education on Student Attitudes Toward Labor Unions." Mid-Atlantic Journal of Business, Vol. 20 (1), 1982, pp. 9-19 (with J. Buckley).

PUBLICATIONS AND PAPERS: (continued)

"Analyzing Age Discrimination Act Cases: Development of a Methodology." Law and Policy Quarterly, Vol. 4 (3), 1982, pp. 339-372.

"Performance Evaluations as Evidence in ADEA Cases." Employee Relations Law Journal, Vol. 6, 1981, pp. 561-583 (with C. Miller).

"Implications of an Aging Work Force." Personnel Administrator, Vol. 26 (10), 1981 pp. 19-22 (with S. Rhodes and M. Doering).

"Performance Appraisal as Evidence in Age Discrimination in Employment Act Cases." American Business Law Association National Proceedings, 1980, pp. 527-553 (with C. Miller).

"Managing the Aging Workforce." A final report to the General Electric Foundation, 1980 (with M. Doering).

"Labor-Management Productivity Program: Their Operation and Effect on Employment and Productivity." A final report to the United States Department of Labor, 1980. Available through the National Technical Information Service.

"A Research Model of Labor-Management Productivity Program Effectiveness." Academy of Management Proceedings, 1979, pp. 246-250.

"Preliminary Data from an Empirical Analysis of the Age Discrimination in Employment Act." American Business Law Association National Proceedings, 1979, pp. 509-525.

RESEARCH GRANTS:

1986 to 1987	Andrus Foundation - $50,000 "The Age Discrimination in Employment Act: An Evaluation of Federal and State Enforcement, Employer Compliance, and Employee Characteristics."
1984 to 1986	General Electric Corporation - $20,000 "The Effects of Plant Closings on Productivity, Quality, Labor Costs, and Employee Attitudes."
1985 to 1986	Andrus Foundation - $39,500 "The Age Discrimination in Employment Act: An Evaluation of Federal and State Enforcement, Employer Compliance, and Employee Characteristics."

RESEARCH GRANTS: (continued)

1983 to 1984	Andrus Foundation - $29,480 (co-recipient) "An Evaluation of the Impact of the Age Discrimination in Employment Act (ADEA)."
1982 to 1983	Syracuse University Research Grant - $4800 "Union-Management Cooperation in Great Britain: An Anglo-American Comparison of Operational Characteristics and an Assessment of Effectiveness."
1982 to 1983	General Electric Foundation - $10,000 "Improving Productivity and Organizational Effectiveness Through Productivity Sharing." This grant provided supplemental funding to the National Science Foundation grant listed below. Its purpose was to permit an expansion of the project.
1981 to 1983	W. E. Upjohn Institute for Employment Research - $15,000 "An Assessment of Union-Management Cooperation and Its Impact on Productivity, Employment and Other Indices of Organizational Effectiveness." This grant provided supplemental funding to the National Science Foundation grant listed below. Its purpose was to permit an expansion of the project.
1980 to 1982	National Science Foundation - $34,973 "An Assessment of Union-Management Cooperation and Its Impact on Productivity, Employment and Other Indices of Organizational Effectiveness."
1981 to 1982	New York State Health Research Council - $10,000 (co-recipient) "The Effect of Overtime Work on Industrial Accident Rates."
1979 to Present	Syracuse University Research Grant - $5650 (co-recipient) "An Evaluation of NLRB Procedural Reforms."
1979 to 1980	General Electric Foundation - $22,000 (co-recipient) "Managing an Aging Work Force."
1979 to 1980	U.S. Department of Labor, Doctoral Dissertation Grant - $9960 "Labor-Management Productivity Programs: Their Operation and Effect on Employment and Productivity."

SELECTED PRESENTATIONS:

"State Enforcement of Age Discrimination in Employment Legislation: The Wisconsin Experience." Paper presented at the 1986 Annual Meeting of the Academy of Management, (with C. Miller).

"The Effects of Plant Closings on Productivity, Quality, and Employee Attitudes." Paper presented at the 1985 Annual Meeting of the Academy of Management, (with G. Kissler).

"A Re-Examination of Models of Cooperation and Change in Union Settings." Paper presented at the Second Berkeley Conference on Industrial Relations, February 22, 1985.

"Gainsharing, QWL, and Union-Management Cooperation, Research and Practice." Paper presented at the OB/PHR Colloquium Series, Harvard Business School, October 17, 1984.

"Productivity, Cost Containment, and Labor-Management Relationships." Paper presented at the Sixth Annual Colloguium for Personnel Executives, Cornell University, October 8, 1984.

"Incentives and Gainsharing: The State of the Art." Paper presented at the State of the Art Conference sponsored by the International Association of Quality Circles, November 28-30, 1984.

"State Enforcement of Age Discrimination in Employment Legislation." Paper presented at the Annual Meeting of the Academy of Management, 1984 (with C. Miller).

Discussant, Session on "Labor Relations," 1984 Annual Meeting of the Academy of Management.

"A Comparative Analysis of Gainsharing Plans." Paper presented at the Annual Conference of the International Association of Quality Circles, 1984 (with C. Miller).

"Supervisory Attitudes Toward Employee Participation. Paper presented at the Annual Conference of the International Association of Quality Circles, 1984 (with C. Miller).

"The Longterm Institutionalization of the Scanlon Plan and Its Impact on Productivity and Employment." Paper presented at the Annual Meeting of the Eastern Academy of Management, 1984 (with C. Miller).

"Regional Variation in Age Discrimination in Employment Legislation." Paper presented at the Annual Meeting of the Eastern Academy of Management, 1984 (with C. Miller).

SELECTED PRESENTATIONS: (continued)

"The Impact of a Plant-wide Productivity-Sharing Plan on Productivity, Employment and other Indices of Organizational Effectiveness." Paper presented at the 1983 Annual Meeting of the Academy of Management.

"Time as an Environmental Factor Affecting Union Certification Elections." Paper presented at the 1983 Annual Meeting of the Academy of Management (with G. Florkowski).

"An Empirical Assessment of the Age Discrimination in Employment Act." Paper presented at the 1983 Annual Meeting of the Academy of Management (with C. Miller).

Discussant, Session on "Quality of Work Life Research," 1983 Annual Meeting of the Academy of Management.

"Performance Appraisal Systems and the Age Discrimination in Employment Act." Paper presented at the 1983 Annual Meeting of the International Personnel Management Association Assessment Council (with C. Miller).

"Evaluating the Older Worker: Experience Under the Age Discrimination in Employment Act." Paper presented at the 1983 Annual Meeting of the Eastern Academy of Management (with C. Miller).

"An Evaluation of the Structure, Process, and Impact of Union-Management Cooperation in the United States: Results of a 38 Plant Study." Paper presented at the University of Tel Aviv, March 2, 1983. Visit sponsored by the University of Tel Aviv and the Israel Fulbright Commission.

"Problems and Opportunities in Implementing Cooperative Union-Management Programs." Paper presented at the Thirty-fifth Annual Meeting of the Industrial Relations Research Association, 1982.

"Attitudes and Behaviors of Older Workers." Paper presented at the 1981 Annual Meeting of the American Psychological Association (with S. Rhodes and M. Doering).

"The Scanlon Plan and Its Impact on Productivity: A Longitudinal Analysis." Paper presented at the 1981 Annual Meeting of the Academy of Management.

Discussant, Session on "Labor Relations," 1982 Annual Meeting of the Academy of Management.

SELECTED PRESENTATIONS: (continued)

"The Impact of Management Education on Student Attitudes Toward Labor Unions." Paper presented at the 1981 Annual Meeting of the Academy of Management (with J. Buckley).

"Wage Incentives and the Fair Labor Standards Act." Paper presented at the 1981 Northeast Regional Business Law Association (with G. Florkowski).

"Evaluating Area Labor-Management Committees." The Annual Meeting of the National Association of Area Labor-Management Committees, Evansville, Indiana, October 27, 1980.

"Assessing the Effectiveness of Union-Management Cooperation on Productivity Improvement." Paper presented at the 1980 Annual Meeting of the Academy of Management.

"Performance Appraisal as Evidence in Age Discrimination in Employment Act Cases." Paper presented at the 1980 Annual Meeting of the American Business Law Association (with C. Miller).

Panelist, Session on "In-plant Labor-Management Committees." National Symposium of the National Association of Area Labor-Management Committees, Cornell University, July 22, 1980.

"The Current Status of Union-Management Cooperation in the United States." Paper presented at the New York State Economics Association Annual Meeting, April 12, 1980.

"Labor-Management Productivity Programs: Their Operation and Effect on Employment and Productivity." Session on Labor-Management Relations, National Council on Employment Policy, 1979. New Researchers Conference, September 13, 1979.

"A Research Model of Labor-Management Productivity Program Effectiveness." Paper presented at the 1979 Annual Meeting of the Academy of Management.

"Preliminary Data from an Empirical Analysis of the Age Discrimination in Employment Act." Paper presented at the 1979 Annual Meeting of the American Business Law Association.

SELECTED ORGANIZATIONAL MEMBERSHIP:

Industrial Relations Research Association
Academy of Management
Industrial Relations Research Association of Central New York

REFERENCES:

Furnished by request

CHRISTOPHER S. MILLER

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& Ashmore
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127 Peachtree Street, N.E.
Atlanta, Georgia 30043-7101
404-658-8184

HOME ADDRESS

390 McGill Place
Atlanta, Georgia 30312
404-523-0515

EDUCATION

Syracuse University School of Management, Ph.D. Candidate in Personnel and Industrial Relations (Dissertation Stage).
Dissertation Topic: "A Longitudinal Evaluation of the Impact of a Quality Circles and Gainsharing Program on Productivity and Other Indicators of Organizational Effectiveness."

Syracuse University, The Maxwell School, M.A. in Economics
Conferred, June 1986

Syracuse University All-University Gerontology Center
Certificate of Gerontology, Conferred, August, 1982

Syracuse University College of Law, J.D.
Conferred, August 1981
Honors: Dean's List, Fall, 1980

Syracuse University School of Management, B.S.
Conferred, May 1978
Honors: Dean's List, 1977-1978

WORK EXPERIENCE

1985-Present	Associate at Troutman, Sanders, Lockerman & Ashmore, Attorneys-at-Law, Atlanta, Georgia. I practice in all areas of labor and employment law.
1984-85	Law Clerk to the Honorable H. Emory Widener, Jr., United States Court of Appeals for the Fourth Circuit, Abingdon, Virginia.
1984	Teaching Assistant, Syracuse University School of Management. I taught an undergraduate introductory course in personnel and industrial relations.
1981-84	Research Associate, Syracuse University School of Management and All-University Gerontology Center. Research and writing in the areas of labor law, employment discrimination, labor-management relations and personnel management.

RESEARCH AWARDS (con't)

Syracuse University College of Law, Center for Interdisciplinary Studies Research Grant, "An Empirical Assessment of Employment Discrimination Claims and the Impact of Organizational Retaliation," 1984.

Andrus Foundation ($29,480; co-recipient), "An Evaluation of the Impact of the Age Discrimination in Employment Act," 1983.

Syracuse University School of Management Summer Research Grant, "Empirical Evaluation of the Impact of the Age Discrimination in Employment Act," 1982.

Administration on Aging Career Preparation Grants, 1979-1981.

HONORS

Syracuse University Graduate Fellowship, 1984.

Student Paper Award, Annual Meeting of the Eastern Academy of Management, 1984.

Selected Participant, Personnel and Human Resources Doctoral Colloquia of the Annual Meeting of the Academy of Management, 1983.

Student Paper Award, Annual Meeting of the Eastern Academy of Management, 1983.

Selected Participant, Personnel and Human Resources Doctoral Colloquia of the American Society for Public Administration National Conference, 1983.

Syracuse University Graduate Fellowship, 1982.

American Bar Association Committee on Legal Problems of the Elderly, Scholarship to attend Age Discrimination in Employment Act Symposium, January 1982.

PRESENTATIONS

C. Miller, "Age Discrimination in Employment Act - The 1986 Amendments". Panelist at the Annual Meeting of the National Council On The Aging, 1987.

C. Miller (with M. Schuster and R. Havranek), "An Empirical Analysis of the Filing and Outcome of State Age Discrimination Complaints." Paper presented at the Annual Meeting of the Academy of Management, 1986.

C. Miller (with M. Schuster), "An Empirical Assessment of the Age Discrimination in Employment Act." Invited paper presented to the Labor Law Group, New York State School of Industrial and Labor Relations, Cornell University, February 6, 1984.

C. Miller (with M. Schuster), "State Enforcement of Age Discrimination in Employment Legislation." Paper presented at the Annual Meeting of the Academy of Management, 1984.

PUBLICATIONS AND PAPERS (con't)

C. Miller (with M. Schuster), An Evaluation of the Impact of Age Discrimination in Employment Legislation. A Final Report to the AARP Andrus Foundation, 1984.

C. Miller (with M. Schuster), An Evaluation of the Quality Circles and Productivity Gainsharing Programs at Anniston Army Depot. A Report to the United States Department of Army, 1984.

Contributing author to Schuster, M., Union-Management Cooperation: Structure, Process, and Impact. Kalamazoo, Mich.: W. E. Upjohn Institute for Employment Research, 1984.

C. Miller (with M. Schuster), Performance Appraisal Systems and the Age Discrimination in Employment Act. Proceedings of the Annual Meeting of the International Personnel Management Association Assessment Council, 1983.

Contributing author to Doering, M., S. Rhodes and M. Schuster, Managing the Aging Workforce: Research and Recommendations. Beverly Hills: Sage Publications, 1983.

C. Miller (with M. Schuster), Evaluating the Older Worker: Experience Under the Age Discrimination in Employment Act. Proceedings of the Annual Meeting of the Eastern Academy of Management, 1983, 148-51.

C. Miller (with M. Schuster), An Assessment of Union-Management Cooperation and Its Impact on Productivity, Employment and Other Indicators of Organizational Effectiveness. A Final Report to the National Science Foundation, September 1982.

C. Miller (with M. Schuster), Evaluating the Older Worker: Use of Employer Appraisal Systems in Age Discrimination Litigation. Aging and Work, 1981, 4(4), 229-43.

C. Miller (with M. Schuster), Performance Evaluations as Evidence in ADEA cases. Employee Relations Law Journal, 1981, 6(4), 561-83.

C. Miller (with M. Schuster), Performance Appraisals as Evidence in Age Discrimination in Employment Act Cases. American Business Law Association Proceedings, 1980.

RESEARCH AWARDS

Andrus Foundation ($50,000; co-recipient), "The Age Discrimination in Employment Act: An Evaluation of Federal and State Enforcement, Employer Compliance, and Employee Characteristics," 1986.

Andrus Foundation ($38,938; co-recipient), "The Age Discrimination in Employment Act: An Evaluation of Federal and State Enforcement, Employer Compliance and Employee Characteristics," 1984.

WORK EXPERIENCE (con't)

1980-81	Graduate Assistant, Professor Richard D. Schwartz, Syracuse University College of Law. Research on the socio-political role of the attorney in the American labor movement.
1980	Graduate Assistant, Professor Patricia Hassett, Syracuse University College of Law. Responsible for writing the economics curriculum in the development of an interdisciplinary criminal law course.

PUBLICATIONS AND PAPERS

C. Miller (with M. Schuster), Gainsharing: Issues For Senior Managers, (under review).

C. Miller (with M. Schuster and R. Havranek), An Empirical Analysis of the Filing and Outcome of State Age Discrimination Complaints: The Wisconsin Experience, (under review).

C. Miller (with M. Schuster and R. Havranek), State Enforcement of Age Discrimination in Employment Legislation, (under review).

C. Miller (with M. Schuster), Gainsharing Plans: A Comparative Analysis. Organizational Dynamics (in press).

C. Miller (with M. Schuster), A Decade's Experience with the Scanlon Plan: A Case Study. Journal of Occupational Behaviour, April 1987, 8, 167-74.

C. Miller (with M. Schuster), Employee Involvement: Making Supervisors Believers. Personnel, February 1985, 62(2), 24-28.

C. Miller (with M. Schuster), An Evaluation of the Impact of Age Discrimination in Employment Legislation. A Final Report to the AARP Andrus Foundation, 1985.

C. Miller (with M. Schuster), An Empirical Assessment of the Age Discrimination in Employment Act. Industrial and Labor Relations Review, 1984, 38(1), 64-74.

C. Miller (with M. Schuster), Integrating Gainsharing and Quality Circles. Quality Circles Journal, 1984, 7(3), 8-16.

C. Miller (with M. Schuster), A Comparative Analysis of Gainsharing Plans. Transactions of the International Association of Quality Circles, 1984, 144-51.

C. Miller (with M. Schuster), Supervisory Attitudes Toward Employee Participation. Transactions of the International Association of Quality Circles, 1984, 114-19.

C. Miller (with M. Schuster), Performance Appraisal and the Age Discrimination in Employment Act. Personnel Administrator, March 1984, 48-58. Reprinted in Performance Appraisal (Alexandria, Va: ASPA, 1985), 10-17.

PRESENTATIONS (con't)

C. Miller (with M. Schuster), "An Exploratory Assessment of Regional Variations in Age Discrimination in Employment Litigation." Paper presented at the Annual Meeting of the Eastern Academy of Management, 1984.

C. Miller (with M. Schuster), "The Long-Term Institutionalization of the Scanlon Plan and Its Impact on Productivity and Employment." Paper presented at the Annual Meeting of the Eastern Academy of Management, 1984.

C. Miller (with M. Schuster), "A Comparative Analysis of Gainsharing Plans." Paper presented at the Annual Conference of the International Association of Quality Circles, 1984.

C. Miller (with M. Schuster), "Supervisory Attitudes Toward Employee Participation." Paper presented at the Annual Conference of the International Association of Quality Circles, 1984.

C. Miller (with M. Schuster), "An Empirical Assessment of the Age Discrimination in Employment Act." Paper presented at the Annual Meeting of the Academy of Management, 1983.

C. Miller (with M. Schuster), "Performance Appraisal Systems and the Age Discrimination in Employment Act." Paper presented at the Annual Meeting of the International Personnel Management Association Assessment Council, 1983.

C. Miller (with M. Schuster), "Evaluating the Older Worker: Experience Under the Age Discrimination in Employment Act." Paper presented at the Annual Meeting of the Eastern Academy of Management, 1983.

C. Miller (with M. Schuster), "Performance Appraisal as Evidence in Age Discrimination in Employment Act Cases." Paper presented at the Annual Meeting of the American Business Law Association, 1980.

BAR ADMISSIONS

Member of Georgia Bar
Member of Pennsylvania Bar
Member of Bar of the United States
  Court of Appeals for the Eleventh Circuit
Member of Bar of the United States
  Court of Appeals for the Fourth Circuit

PROFESSIONAL ACTIVITIES

Atlanta Bar Association
American Bar Association, Section on Labor
  and Employment Law
Academy of Management
Industrial Relations Research Association
International Industrial Relations Association

REFERENCES

Available upon request.

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113 Genesee St. #1
Chittenango, N.Y. 13037

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Office: (315) 423-2601

EDUCATION

SYRACUSE UNIVERSITY, Syracuse, N.Y.

Ph.D. Personnel and Industrial Relations and Organization Behavior, expected 1988

M.B.A. Personnel and Industrial Relations
Courses: Compensation, Training and Development, Collective Bargaining, August 1984 - GPA 3.95

B.S. Accounting, May 1976

ACADEMIC HONORS

Graduate Assistantships and Fellowship, Summer 1985
Graduate Alumni Award, Syracuse University, for academic excellence, 1984
Beta Gamma Sigma - nominee (National Management Honor Society)
Beta Alpha Psi (National Accounting Honor Society)
Dean's Honor List

EXPERIENCE

9/84 - present

Teaching Assistant
Syracuse University
Teaching undergraduate course in personnel management.

Fall, 1985

Consultant
Dr. Michael Schuster, Syracuse University
Entered and processed data sets using SAS ARIMA, time series and graphics programs.

Summer, 1985

Consultant
Dr. Mildred Doering, Syracuse University
Interviewed incumbents and wrote job descriptions for food brokerage firm.

Summer, 1985;
9/83-8/84

Research Assistant
Syracuse University
Research and data processing in area of career change. Specifically, contacted research sites, trained assistant for site visits, coordinated, controlled and participated in data collection and analysis. Analysis included factor analysis and causal modeling.

5/82-8/83

Graduate Assistant
Syracuse University
Graded papers and performed administrative duties for Independent Study Degree Program.

3/80-4/82

Data Control Manager

Touchette Corporation, East Syracuse, New York

Account Manager for Addis Company. Developed, implemented and trained client on input-output controls for various data processing applications. Oversaw accuracy and timeliness of client processing.

Financial Statements Division. Processed clients' reports and set up new clients; trained personnel.

6/76-12/79

Accounting Manager

Wells and Coverly, Syracuse, New York

Administrative and supervisory responsibility for corporate accounting functions.

Major responsibilities: supervised 20 accounting personnel; produced monthly and annual financial statements, developed annual corporate budget, prepared annual external audit information.

Specific duties: conducted cost analysis, coordinated computerized reporting systems, organized corporate training seminars, and advised corporate officials on financial policies and procedures.

4/70-3/73;
9/75-5/76
Part-time

Bookkeeper

Bronson Interiors, Ltd., DeWitt, New York

Performed diversified accounting functions: general ledger, accounts receivable, accounts payable, payroll, tax reports, tariffs, auditing, freight claims, and bank reconciliations.

PUBLICATION

Factor structure comparison of occupational needs and reinforcers (with M. Doering and S. Rhodes). *Eastern Academy of Management Proceedings*, 1985.

PRESENTATION

Factor structure comparison of occupational needs and reinforcers (with M. Doering and S. Rhodes). Presented at Eastern Academy of Management meeting. May 1985, Albany, N.Y.

PROFESSIONAL ACTIVITY

Reviewed papers, Eastern Academy of Management meeting, May 1985.

AFFILIATIONS

Academy of Management, 1984 - present.

Association of Professional Managerial and Executive Women, 1978-1981.

Treasurer, University College Alumni Association Board of Directors, 1976 - 1977.